THE

LAWYER'S OFFICIAL OATH

AND OFFICE

BY

JOSIAH HENRY BENTON, LL.D.

BOSTON
THE BOSTON BOOK COMPANY
1909

THE ROCKWELL AND CHURCHILL PRESS

THE LAWYER'S OFFICIAL OATH AND OFFICE.

By JOSIAH HENRY BENTON, LL.D.

MOST of what is contained in this book was gathered by me in the preparation of an address delivered before the Albany Law School in the Hubbard course of Legal Ethics, May 17, 1909. It has been suggested that its presentation in this form will be useful to the profession, as some of it is not otherwise easily accessible to all who are interested in the subject of the lawyer's oath and office.

This, as well as my own belief that the dignity and importance of the lawyer's office and of the duties imposed by his official oath should be more fully understood, have caused me to print this little book.

Why is any oath required for admission to the practice of the law? No oath is required by law for admission to practise in any other profession, even where qualifications to practise are prescribed or ascertained by examinations required by law, as in the case of physicians. But an official oath has always been required for admission to the practice of the law. Why is it required? What is its significance and what obligation does it impose?

The significance of the lawyer's oath is that it stamps the

lawyer as an officer of the State, with rights, powers and duties as important as those of the Judges of the Courts themselves. When a lawyer is admitted to practise and takes the required oath of office he has as much right to discharge the duties of his office as a representative or senator has to sit and act in the Legislature, or a Governor to exercise the functions of a chief magistrate. He has as much right to appear in Court and be heard for a party to a cause as a Judge has to hear and decide the cause. *A lawyer is not the servant of his client. He is not the servant of the Court.* He is an *officer* of the Court, with all the rights and responsibilities which the character of his office gives and imposes.

He is also an officer for life whose office cannot be taken from him except for cause established by due process of law upon proof, hearing and judicial determination.

This was settled upon great consideration by the United States Supreme Court in the noted case of *Ex parte* Garland (4 Wallace, 333). In 1865 Congress passed an act providing that no person should thereafter be admitted to the Bar of the Supreme Court of the United States, or any other Federal Court, unless he should first have taken and subscribed an oath to the effect that he had " never voluntarily borne arms against the United States, or voluntarily given aid, countenance, counsel or encouragement, to persons engaged in armed hostility thereto, or attempted to exercise the functions of any office under any authority or pretended authority in hostility to the United States," and the rule of the Supreme Court as to the admission of attorneys was changed in that year by the addition of a clause requiring an oath in conformity with this act of Congress.

The question as to the validity of this statute and change in the rule of Court was raised by Mr. Garland, who had been admitted to practise under the original rule of Court in 1860, and had thereafter been a member of the Confederate Congress, but had been pardoned by the President in July, 1865. Of course, he could not take the oath required by the amended rule, and the effect was that the act of Congress and the rule enforcing the same prevented him from ever being an attorney in any Federal Court, *i.e.*, *deprived him of his office as an attorney.*

The Supreme Court held that the office of an attorney was not an office created by Congress, and depending upon Congress for its continuance, but that an attorney was an officer of the Court, holding his office during good behavior, and could only be deprived of it for misconduct, ascertained and declared by the judgment of the Court after opportunity to be heard had been afforded. It was also held that the admission or exclusion of attorneys was the exercise of judicial power, and that "the attorney being by the solemn judicial act of the Court clothed with his office, does not hold it as a matter of grace and favour. The right which it confers is not revocable at the pleasure of the Court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the Court for moral or professional delinquency." *

Speaking of this subject in a leading case, † where an act of the Legislature was held unconstitutional because it com-

*As the result of this decision the Court, by the same opinion in which it was rendered, rescinded the amendment of the rule requiring an additional oath of admission as an attorney. And the rule was thus restored to its original form, in which it now exists (210 U.S., page 472).

†Splain's Petition, 123 Penn. St. 527.

manded the Court to admit persons whether found to be fit or not, Paxson, C.J., said:

> "No judge is bound to admit, nor can be compelled to admit, a person to practise law who is not properly qualified, or whose moral character is bad. The profession of the law is one of the highest and noblest in the world. The relation between attorney and client is a very close one, and often involves matters of great delicacy. The attorney is an officer of the court, and is brought into close and intimate relations with the court. Whether he shall be admitted or whether he shall be disbarred is a judicial and not a legislative question."

One of the greatest lawyers the United States has produced, Justice Miller of the Supreme Court, spoke of the lawyer's office in these words:

> "The lawyer in this country is one of the administrators of justice. The judge who presides in the court is another, with more authority of position, and, perhaps, in some respects a more burdensome one. But the court, and the clerk, and the marshal, the sheriff, the jury, the lawyer, all constitute ministers of justice; and a lawyer who consciously undertakes to thwart justice is unfit for the position, as much as the judge who accepts a bribe, or knowingly decides a case against the law and the right; and it should be understood that they are subjected to the same responsibilities. They have a duty, undoubtedly, to their clients; but this is not the first duty, as is generally supposed. Their first duty is

the administration of justice, and their duty to their client is subordinate to that." *

In the discharge of the duties of his office the lawyer exercises large powers and has corresponding responsibilities. He may bind his client by agreements and by conduct of which the client knows nothing, if they are within the scope of his duties as a lawyer in respect to a matter confided to him by the client. He may institute suits and cause acts to be done in them for which his client may be held responsible although entirely ignorant of them when done. He may bind his clients by written agreements out of Court or by oral agreements in open Court. He may dismiss his client's case or consent to a judgment against him, and the client is bound by his action.

His right to appear for his client can only be questioned by the client. His adversary cannot force him to prove his right to appear for his client, nor will the Court do so except for special and peculiar cause. As a rule his statements of fact, unless disputed, are accepted and acted upon by the Court as true. Countless judicial acts, many of them important, are daily done by the Courts upon unsupported statements of fact by lawyers, and in my judgment the business of the Courts could be done in no other way. Time would not permit proof by writing or by witness of every fact upon which the Courts must act. They must be able to rely upon counsel, and they do so, because the lawyer is acting as an officer of the Court under the sanction and responsibilities of an official oath.

A great English Judge, Lord Langdale, in a ruling by

* *In re* Thomas, 36 Fed. Rep. 243.

which he required counsel to aid him with their opinions as to the character of a certain class of cases, stated the duty of lawyers and their relation to the administration of justice in language so apt, and also so appreciative of the services of lawyers, that I quote it. He said:

> "With respect to the task, which I may be considered to have imposed upon counsel, I wish to observe that it arises from the confidence which long experience induces me to repose in them, and from a sense which I entertain of the truly honourable and important services which they constantly perform as ministers of justice, acting in aid of the Judge before whom they practise. No counsel supposes himself to be the mere advocate or agent of his client, to gain a victory, if he can, on a particular occasion. The zeal and the arguments of every counsel, knowing what is due to himself and his honourable profession, are qualified not only by considerations affecting his own character as a man of honour, experience, and learning, but also by considerations affecting the general interests of justice." *

A lawyer as an officer of the Court is also privileged from arrest upon civil process while engaged in the performance of his duties.†

A lawyer is also privileged as to the language honestly and pertinently used by him in the pleadings or in the conduct of a case in Court, subject only to the limitation that he shall not use the language "to gratify private malice by uttering slanderous expressions, either against a party, wit-

* Hutchinson *v.* Stephens, 1 Keen's Reports, 659 at 668.
† *In re* Jewitt, 33 Bevan, 559.

ness or third person, which have no relation to the cause or subject matter of the inquiry." *

It is therefore of the highest importance that the lawyer's oath should not only be uniform in all our Courts, but that it should be so framed as to indicate the duties and responsibilities of those who take it. In short, the lawyer's oath should be a condensed code of legal ethics. And this is what it was in England and in America from the beginning until by a reaction against the multiplicity of oaths imposed by law and of oaths taken without warrant of law, the lawyer's oath was so changed in form as to be now in most of the State Courts and in all the Federal Courts only a mere obligation to discharge faithfully the duties of the office of an attorney.

How far the adoption of codes and canons of legal ethics will be of permanent benefit may well be questioned, but if the work which has been done, and is being done, in that direction by the public-spirited members of the profession who have it in charge results in restoring in all our Courts the official lawyer's oath of the English-speaking people in the olden time, which is now used in some States, it will be of permanent benefit to the profession and the people.

When was that oath framed and what was it? It was doubtless framed when the order of the English Bar was established, and lawyers were called pleaders, sergeants-at-law and attorneys. The order of the profession of the law exists by the right of an earlier creation than that of the oldest English peerage, and its history can be traced for more than eight hundred years. It was a part of the

* Hoar *v.* Wood, 3 Metcalf (Mass.), 197; Mackay *v.* Ford, 5 H. & N. 792; Ruohs *v.* Backer, 6 Heisk (Tenn.), 406.

administration of the government of the realm before the Hall of William Rufus lifted its arches to the English sky, and for more than three centuries before Columbus swept the veil from the face of the new world.*

When, in the reign of Edward I. (A.D. 1272–1307), — the English Justinian, — English history ceased to be the "domain of antiquarians," and became "the domain of lawyers," † lawyers were recognized as an existing order, and their conduct regulated by the famous Statute, Primer Westminster, A.D. 1275. This statute, which Coke says was the first English statute passed by a lawful Parliament consisting of the Commons, the Lords spiritual and temporal, and the King, provided that:

> "If any serjeant, pleader, or other, do any manner of deceit or collusion in the king's court, or consent unto it, in deceit of the court, or to beguile the court, or the party, and thereof be attainted, he shall be imprisoned for a yeare and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he shall be imprisoned in like manner by the space of a year and a day at least; and if the trespass require greater punishment, it shall be at the king's pleasure."

The commentary of Coke upon this statute shows what the oath of the serjeant-at-law was. He says:

> "For the better understanding of this act, it is

* The Order of the Garter was established in 1330, the first Marquis was created in 1385, the first Duke was created in 1388, the Order of the Bath was established in 1399, and the rank of Viscount was first used in 1440.

† Freeman's "Growth of the English Constitution," Chapter II.

necessary to set downe the oath of the serjeaunt at law.

"This oath consisteth on foure parts.

"1. That he shall well and truly serve the kings people, as one of the serjeaunts of the law.

"2. That he shall truly counsell them, that he shall be retained with, after his cunning.

"3. That he shall not defer, tract, or delay their causes willingly, for covetousnesse of money, or other thing that may tend to his profit.

"4. That he shall give due attendance accordingly."

Then speaking of the oath of the King's sergeant-at-law he says:

"This oath consisteth on six parts.

"1. That he shall well and truly serve the king and his people, as one of the kings serjeaunts at law.

"2. That he shall truly counsell the king in his matters when hee shall be called.

"3. And duely and truly minister the kings matters after the course of the law, to his cunning.

"4. He shall take no wages or fee of any man for any matters, where the king is party, against the king.

"5. He shall as duly, as hastily speed such matters, as any man shall have to do against the king in the law, as he may lawfully doe, without delay, or tarrying the party of his lawful proces in that belongeth to him.

"6. He shall be attendant to the kings matters when hee shall be called thereto." *

A chapter is given to a statement of the duties of Eng-

*Coke's Second Institute (Ed. 1817), pages 212–214.

lish lawyers in that curious manuscript written probably about A.D. 1285 called "The Mirror of Justices" as follows:

"CHAP. V. OF PLEADERS.

"Some there be who know not how to state their causes or to defend them in court, and some who cannot, and therefore are pleaders necessary; so that what plaintiffs and others cannot or know not how to do by themselves they may do by their serjeants, proctors, or friends. Pleaders are serjeants wise in the law of the realm who serve the commonalty of the people, stating and defending for hire actions in court for those who have need of them. Every pleader who acts in the business of another should have regard to four things: First, that he be a person receivable in court, that he be no heretic, nor excommunicate, nor criminal, nor man of religion, nor woman, nor ordained clerk above the order of subdeacon, nor beneficed clerk with the cure of souls, nor infant under twenty-one years of age, nor judge in the same cause, nor open leper, nor man attained of falsification against the law of his office. Secondly, that every pleader is bound by oath that he will not knowingly maintain or defend wrong or falsehood, but will abandon his client immediately that he perceives his wrongdoing. Thirdly, that he will never have recourse to false delays or false witnesses, and never allege, proffer, or consent to any corruption, deceit, lie, or falsified law, but loyally will maintain the right of his client, so that he may not fail through his folly, or negligence, nor by default of him, nor by default of any argument that he could urge; and that he will not by blow contumely, browl, threat, noise, or villian conduct distub any judge, party, serjeant, or other in court, nor impede

the hearing or the course of justice. Fourthly, there is the salary, concerning which four points must be regarded — the amount of the matter in dispute, the labour of the serjeant, his value as a pleader in respect of his (learning), eloquence, and repute, and lastly the usage of the Court. A pleader is to be suspended if he is attainted of receiving a fee from both sides in one cause, or if he says or does anything in contempt of the judge, or if he fails in any of the points above mentioned concerning the exceptions which may be taken to the person of the pleader, for none may be a pleader who cannot be an accuser or plaintiff." *

This statement of the duties of lawyers in England corresponds somewhat to the statement of their duties in Normandy, found in Chapter 64, Grand Coutumier de Normandie, and makes it probable that the requirements of the English law in this matter were based upon those of the Norman law, for after the Conquest the laws and customs of Normandy entered into and modified those of England, as English laws and customs reciprocally modified those of Normandy.†

The lawyer's office was well established, however, in England and in France long before this time.

When in the year 707 the French Parliament ceased to be a purely political body and assumed certain judicial functions, it became ambulatory and followed the King, holding sittings wherever the King from time to time resided. Certain advocates attended it at these sittings, and were recognized as lawyers, and entitled to practise in the Parliament. The body of laws made in 802, called the Capitularies of Charlemagne, recognized the profession of the lawyer and pro-

* "The Mirror of Justices," Selden Edition, 1895, pages 47–8.
† See Hale's History of the Common Law of England, Chap. 6.

vided "that nobody should be admitted therein but men, mild, pacific, fearing God, and loving justice, upon pain of elimination."

But by an ordinance of February 13, 1327, Philippe de Valois, then Regent, provided that

> "No advocate shall be permitted to plead if he has not taken the oath, and if he be not inscribed on the roll of advocates."

In 1344, further regulations were made by the Parliament of Paris, providing that

> "Those advocates who are retained shall not be allowed to continue their practice unless they bind themselves by oath to the following effect: to fulfil their duties with fidelity and exactitude; not to take charge of any causes which they know to be unjust; that they will abstain from false citations; that they will not seek to procure a postponement of their causes by subterfuge, or malicious pretexts; that whatever may be the importance of a cause, they will not receive more than thirty livres for their fee, or any other kind of gratuity over and above that sum, with liberty, however, to take less; that they will lower their fees according to the importance of the cause and the circumstances of the parties; and that they will make no treaty or arrangement with their clients depending on the event of the trial." *

Among the decrees promulgated at a Council at St. Paul's,

* A History of the French Bar, Ancient and Modern, by Robert Jones, pages 100, 103.

London, in 1237, by Cardinal Otto, Legate of Pope Gregory Ninth, who had been summoned to England by Henry Third, was one as to the oath to be taken by advocates, as follows:

> "We, therefore, rising to the assistance of justice, do, with the approbation of the council, decree, that whoever wishes to obtain the office of advocate shall make oath to the diocesan in whose jurisdiction he lives, that in cases in which he may plead, he will plead faithfully, not to delay justice or to deprive the other party of it; but to defend his client both according to law and reason. Otherwise, they shall not be admitted to plead, in matrimonial cases and elections, unless they make a like oath; and they shall not be admitted in other cases before the ecclesiastical judge for more than three terms, without an oath of this kind, unless by chance a demand is to be made on behalf of this church, or his lord, or for a friend, or for a poor man, a foreigner, or any wretched person. Let all advocates beware that they do not themselves, or by means of others, suborn witnesses, or instruct the parties to give false evidence, or to suppress the truth: those who do so shall be, *ipso facto*, suspended from office and benefice, until they have made proper atonement for the same; and if they are convicted of so doing, they shall be duly punished, all other matters notwithstanding. Judges, too, who are ignorant of the law, should, if any doubtful point arise, from which injury may accrue to either party, ask the advice of some wise person, at the expense of both parties."*

* Matthew of Paris, Eng. Hist., Vol. I., page 91 (Bohn, 1852).

An ordinance of Philip the Bold, of France, concerning the functions and fees of attorneys, given October 23, 1274, provided as follows:

"Philip, by the grace of God, king of the Franks, to the seneschal of Carcassonne.* Greeting:

"Inasmuch as we are zealously guarding the interests and welfare of our subjects, so that before you and in the courts of bailiffs, seneschals, prefects and other judges, that is, our representatives, they may obtain each one his lawful right in cases at law and transactions more easily and freely; and, furthermore, inasmuch as we propose to deter those who in the matter of cases at law and judicial transactions offer their professional services, from maliciously protracting legal contests or charging immoderate fees, Therefore:

"(1.) We have it ordained and made a statute that all and each one exercising the functions of attorney either in your court or in that of bailiffs and our aforementioned officials, that is, in the courts of judges, shall swear upon the Sacred Gospels the oath, viz.: That in all cases which are being tried in said courts before which they have practised in the past or shall practise, they will perform their duties bonâ fidê diligently and faithfully as long as they have reason to believe their case to be just. They shall not bring any case into said courts either as defending or counselling lawyers unless they shall have believed it to be just; and, if at any stage of the trial the case appears to them unjust, or even intrinsically bad, they shall discontinue to further defend it, withdrawing from said case entirely as defending or counsel-

*Carcassonne, in the department of Aude, was one of the oldest fortified cities in Central France. Philip the Bold made it the capital of Central France.

ling lawyers. Whosoever declines to swear in accordance with this formula, shall take cognizance, that in said courts they are disbarred, as long as they persist in this state of mind.

"(2.) Now, concerning the fee of attorneys, we have held it a statute that fees should be received in accordance with the importance of the case and the merits of the attorney; and this for each case that is being argued. But for an entire case argued either before our tribunal or yours, or that of any of our aforesaid justiciaries, the fee of one attorney shall not exceed the amount of 30 francs.*

"(3.) The attorneys shall swear also that neither under the guise of pension or stipend or present or favor, nor under any kind of pretext of their own, nor by device of others; nor by any scheme of whatever color planned in the past or being planned even without fraudulent intent, they shall acquire any amount beyond the one stated afore Whosoever undertakes to break the orders and statutes as laid down, and thus violates the oath that has been sworn to, this same attorney, his case having been proven in the aforesaid courts, shall be branded with the stigma of perjury and infamy, without looking for any specific sentence upon him; and he shall be, hereafter and forever, disbarred from exercising the functions of an attorney; unless it seems best to us or to the others of our judges in whose courts he have been found guilty, to punish him in some other way.

"(4.) We have ordained also, that aforesaid oath shall be renewed by all attorneys every single year; and this our

* "Thirty francs." The Latin says: Summam triginta librarum turonensium, the sum of 30 turonensian pounds; a piece of money, first coined at St. Martin's Abbey in Tours, France. During the eleventh century it became the royal coin, supplanting almost wholly the Parisian franc. In value it exceeded somewhat a modern franc-piece.

order we command to be published by our bailiffs, seneschals, and our other justiciaries in their assisses three times each year.

"To you we command strict enforcement, and to see that this our statute be faithfully observed by those under your authority; also, that it be published in the assisses and courts as soon as they convene with you, and to have this publication repeated everywhere three times each year.

"Transgressors of it you will punish in accordance with the form prescribed before.

"Acted, in Paris, on the day of March, preceding the feast of the Saint Apostles, Simon and Jude, in the year of Our Lord 1274." *

The official character and duties of lawyers were recognized and enforced by an edict of Francis I., 1536, on the administration of justice in the Bretagne, and on the shortening of trials, as follows:

Chap. I., Article 37: That "advocates must not give advice to both parties under punishment of being heavily fined by financial penalties, suspension or loss of all their property." . . .

Also in Chap. I., Article 39: That "if there should happen some poor and wretched people, who on account of their poverty or because of the sway and fear of their parties (*i.e.*, opponents), cannot obtain counsel, we enjoin the judges to provide counsel for them, and to punish and fine the attorneys (*advocats*) and barristers (*procoureurs*) who without

* Recueil générale des anciennes lois françaises depuis l'an 420 jusqu'à la révolution de 1789; Paris, Tome II. (1270–1308), pages 652–654, No. 247.

reasonable ground, should have refused to take charge of them." * †

This was only following the laws and customs of all European nations in the Middle Ages and also those of the Roman Empire. The man of law who advised and spoke for others for hire had recognized and regulated rights and duties under the sanction of an official engagement or promissory oath. In Rome when the advocatus was called upon by the Praetor to aid a client in a cause, he was solemnly exhorted "to avoid artifice and circumlocution." "Aderant in judicio advocati, qui causas litigantium nudo simplicique oratione, sine ullo verborum circuitu, tractare jubebantur." ‡

In 1221 Frederic the Second prescribed an oath as follows:

"We will that the advocates to be appointed, as well in our court as before the justices and bailiffs of the provinces, before entering upon their office, shall take their corporal oath on the Gospels, that the parties whose cause they have undertaken they will, with all good faith and truth, without any tergiversation, succour; nor will they allege any thing against their sound conscience; nor will they undertake desperate causes; and, should they have been induced, by misrepresentation and the colouring of the party to undertake a cause which, in the progress of the suit, shall appear to them, in fact or law, unjust, they will forthwith abandon it. Liberty is not to be granted to the abandoned party to have recourse to another advocate. They shall also swear that, in the progress of the

* Recueil générale. Tome XII. (1514-1546), No. 235, page 515.

† This was always the duty of the lawyer at the Common law of England. See Viner's Abridgment, Title Pauper, etc.

‡ Lawyers were present at the trial who were enjoined to handle the cases of litigants without artfulness and with simple language without any circumlocution.

suit, they will not require an additional fee, nor on the part of the suit enter into any compact; which oath it shall not be sufficient for them to swear to once only, but they shall renew it every year before the officer of justice. And if any advocate shall attempt to contravene the aforesaid form of oath in any cause, great or small, he shall be removed from his office, with the brand of perpetual infamy, and pay three pounds of the purest gold into our treasury.' "*

Paul Fournier, *Les officialités au moyen âge*, Étude sur l'organisation, la compétence et la procédure des tribunaux ecclésiastiques ordinaires en France, de 1180 à 1328, Paris, 1880, page 21, lines 1–6, says that: "When entering upon his duties, the official swore an oath to perform his duties with integrity, to defend and guard the jurisdiction of his court, and in no wise to permit a lessening of its privileges. In certain localities, he had to renew this oath annually. The obligation of the oath was required of all officials of the ecclesiastical court (la cour spirituelle)."

This statement rests upon the documentary evidence furnished by Giovanni Domenico Mansi in his collection of the orders, decrees, and statutes of the councils and synods of the Mediæval Church.† From the large number of statutes concerning the oath, duties, and privileges of lawyers contained in this collection a few are as follows:

The Council of Rouen, held A.D. 1231, decreed in section 45 of its statutes, ‡ that:

*"Oaths; their Origin, Nature, and History," by James Endell Tyler, B.D. London, 1835. Page 300.

†Labbé, Philippe, and Gabriel Crossart, "Sacrorum conciliorum nova et amplissima collectio . . . editio novissima a . . . patre Mansi edita. Florentiae, 1759." Reproduction in facsimile. Paris, Welter, 1901.

‡Concilium Provinciale celebratum Rotomagi. Capitulum 45, in Labbé and Crossart, volume 23 (1903), col. 216.

"Every single advocate shall swear that he will faithfully perform his duties; that he will not support cases that are unjust or militate against his conscience; that he will not abstract (embezzle) documents of his party (client), nor cause such to be abstracted; that he will not, to his knowledge, use false pleas, or such as have been malitiously excogitated; that he will not bring it about that falsehoods and surreptions be made, or that false documents be produced in his case; nor that he will prolong (delay) the case of his client as long as he believes that he is acting in the interest of the client himself; and that in those matters which shall be transacted in court and concerning which requirements are made of him by the Judges, he will not silence the truth according to his belief; and that if he become convinced of being inadequate to the handling of the case, he will have conference with the procurators; and that he will prepare with his own hand a journal and the acts in cases which he has taken, as faithfully as possible; or that he will cause them to be written out, in case he be neither able nor willing to do so himself."

The same year, 1231, the bishops of the Province of Tours, under Archbishop Juhel de Mayenne, assembled a council at Chateau-Gontier, of whose reform-canons section 36, entitled: "Concerning the oath of the advocates," states that: "The advocates who in accordance with usage receive pay, shall by no manner of means be admitted, unless they have been sworn in. The formula for such an oath is thus: That they shall not favor (take) knowingly cases that are not just; nor shall they bring about, with malice afore-

thought, undue delay or haste in the conduct of cases by means of false oath, rather than stand by the truth. Nor shall they instruct their client toward malitious answer or statement; nor shall they after the published attestations, or at any stage of the trial, nor even before the oath suborn witnesses, or cause them to be suborned. Nor shall they permit their client to produce false witnesses; and if they should gain knowledge thereof, they shall reveal such to the court. If memorials (briefs) are to be made they shall do so in good faith, and not withdraw from court malitiously, until the memorial be completed and admitted in court. Clients they shall expedite to the best of their ability, and in good faith. Nor shall they bother (literally burden) the Judge with objections, believing that they will give in to them. They shall sustain the honor of the court, nor perpetrate in court a falsehood." *

The same Bishop Juhel in a synod at Tours, A.D. 1236, stated in Chap. 2, "Concerning advocates," that: "Inasmuch as through the ignorance of advocates or scribes many sustain losses in trials, therefore we ordain that none shall be admitted in public trials, unless they have studied law for three years, or have proven capable, in the past, in the conduct of cases." †

In 1278 the synod of Langeais, in France, under the presidency of the Metropolitan of Tours, Jean de Montsereau, ordained that: "Without mentioning anything new, we ordain, that the customary pleaders or advocates of trials

* Concilium apud Castrum Gonterii. Capitulum 36: "De juramento advocatorum," in Labbé and Crossart, volume 23, columns 240, 241.

† Concilium Turonense. Capitulum 2: "De advocatis," in Labbé and Crossart, volume 23, columns 411, 412.

shall swear at the time when they are admitted to the court either for the purpose of stating or defending a case that knowingly they will not favor cases that are unjust, and that they will give their clients as faithful a defense as is in their power. And, inasmuch as not a few cases have been lost through ignorance on the part of advocates, we, therefore, will that none shall be admitted to conduct cases in the ecclesiastical court, unless they have studied three years at least in canon and civil law, or are otherwise made experts in the performance of their duties. To be sure, all other statutes promulgated in regard to advocates, are remaining in full force." *

In 1295 Robert of Winchelsea, Archbishop of Canterbury, issued "Statuta et ordinationes" for the better administration of his diocese. Chapter 3 of these statutes and orders describes the Form of oath of advocates and procurators (*i.e.*, attorneys and barristers), as follows:

"Advocates also and the general procurators of the aforesaid consistory, may swear similarly the oath written above (Section 1: formula of the oath of judges), with these additions, unless they should be contained in the aforementioned formula, that they will observe the aforesaid customs and statutes, as far as they affect them, and that they will bring no case to trial, unless they believe it to be true and honest, upon the information on the part of their clients; that, in receiving informations from their clients, they will elicit from them, with all possible caution, the truth of the case, and they will clearly show their clients the

* Concilium Langesiense. Capitulum 15: "De advocatis," in Labbé and Crossart, volume 24 (1903), column 216.

dangers to which they expose themselves in legal proceedings as far as they know, declining to prosecute any further desperate, bad cases; and as soon as the cases or surrounding conditions show themselves to be unjust (dishonest) from the point of view of the law, they shall relinquish them entirely." *

In this connection the lawyer's oath in use in the north of Europe in olden times is of interest.

The code of Danish laws promulgated by Christian V. of Denmark and Norway in 1683 as a revision of the code completed in 1669, contained a chapter entitled "Of those who are allow'd to plead the Causes of others, or their own," which provided that

> "Lawyers who are allowed to plead Causes, shall be Men of Probity, Character, and known Repute.
>
> "In Cities shall be appointed such a Number of Lawyers as are really requisite.
>
> "No one shall be admitted as a Lawyer to act, who does not take an Oath before the Mayor and Aldermen, that he will undertake no Cause he knows to be bad, or iniquitous; that he will avoid all Fraud in pleading, bringing Evidence, and the like: That he will abstain from all Cavils, Querks and Chicanery; and never seek by Absence, Delays, or superfluous Exceptions, to procrastinate a Suit: That he will use all possible Brevity in transcribing Processes, Deeds, Sentences, &c. That he will never encourage Discord, or be the least Hindrance to Reconciliation: That he will exact no exor-

* Labbé and Crossart, volume 24, column 1149.

bitant Fees from the Poor, or others: And that he will act honestly, and to the best of his Power, for all his Clients. Of this Oath the Judges shall admonish the Lawyers in dubious Cases, and if they think proper, require a Renewal of it in the Court; and moreover, command them to abstain from all Manner of Scurrility, and Abuse, in their Pleadings, especially where the Process does not concern the Fame of the Defendant.

"A Lawyer defective in this his Duty shall be discarded, rendered incapable of ever after pleading, and moreover punishment in Proportion to his Offence." *

The earliest authentic forms of the lawyer's oath in England now to be found are those of the Serjeant-at-Law and of the King's Serjeant in an ancient Roll of Oaths in the reign of Queen Elizabeth, which was until recently kept in the Crown Office at Westminster, but is now at the Record Office in Chancery Lane, London. The Deputy Clerk of the Crown reported to the Select Committee of the House of Commons upon the Public Records of the Kingdom in 1800 as to this Roll as follows:

"There is no date to the Roll above-mentioned, but it appears to have been written in the reign of Queen Elizabeth, and has been altered (only in form) to make the oaths applicable to the reign of King Charles."

I have recently personally examined this Roll, and careful inspection of it confirms the above statement. This report of the Deputy Clerk also shows that the oaths of the Ser-

* The Danish Laws: Or the Code of Christian the Fifth, Faithfully translated for the Use of the English Inhabitants of the Danish Settlements in America. London, 1756, pages 58, 59.

jeants-at-Law and of the King's Serjeant were administered by the Clerk of the Crown, and that there was no record in the books of the Crown Office showing that any change had ever been made in their form.*

These oaths as now, copied from the Roll itself, are as follows:

King's Serjeant.

Sacrm̄ servient regis ad legem.

Ye shall Swear, That well and truly ye shall serve the King and His People, as one of His Serjeants of the Law, and truly council the King in His Matters when ye shall be called, and duely and truly minister the King's Matters, after the Course of the Law, to your Cunning: ye shall take no Wages nor Fee of any Man for any Matter where the King is Party against the King; ye shall as duly and hastily speed such Matters as any Man shall have to do against the King in the Law, as ye may lawfully do without Delay or tarrying of the Party of his lawful process in that that belongeth to you; ye shall be attendant to the King's Matters when ye shall be called thereto; as God you help, and by the Contents of this Book

Serjeant at Law.

Sacrum servientum ad legem.

Ye shall Swear, That well and truly ye shall serve the King's People as one of the Serjeants at the Law, and ye shall truly council them that ye shall be retained with after your Cunning; and ye shall not defer, tract, or delay their Causes willingly, for covetous of Money, or other Thing that may turn you to Profit; and ye shall give due Attendance accordingly; as God you help, and by the Contents of this Book. †

* Reports of House of Commons, Vol. XV. (Appendix D. 2. C), p. 98.

† These oaths are numbered 12 and 13 on the original Roll.

This Ancient Roll contains no form of Attorney's Oath, but attorneys were sworn certainly as early as 1402, when it was provided by Act of Parliament as follows:

> "For sundry Damages and Mischiefs that have ensued before this Time to divers Persons of the Realm by a great Number of Attornies, ignorant and not learned in the Law, as they were wont to be before this Time; (2) it is ordained and established, That all the Attornies shall be examined by the Justices, and by their Discretions their Names put in the Roll, and they that be good and vertuous, and of good Fame, shall be received and sworn well and truly to serve in their Offices, and especially that they make no Suit in a foreign County; and the other Attornies shall be put out by the Discretion of the said Justices; (3) and that their Masters, for whom they were Attornies, be warned to take others in their Places so that in the mean Time no Damage nor Prejudice come to their said Masters. (4) And if any of the said Attornies do die, or do cease, the Justices for the time being by their Discretion shall make another in his Place, which is a vertuous Man and learned, and sworn in the same Manner as afore is said; (5) and if any such Attorney be hereafter notoriously found in any Default of Record, or otherwise, he shall forswear the Court, and never after be received to make any Suit in any Court of the King; (6) And that this Ordinance be holden in the Exchequer after the Discretion of the Treasurer and of the Barons there." *

The earliest authentic record of an Attorney's Oath now to be found is in the famous Red Book of the Exchequer preserved in the Record Office. This book was a reg-

* 4 Henry IV., Cap. 18. 1402.

ister of important documents, forms of oaths and other matters which it was deemed desirable to preserve in a permanent form, transcribed from mediæval Remembrancer Books and other sources. It was doubtless a book of precedents in the Court of Exchequer from a very early period, perhaps as early as the year 1246, and additions were made to it from time to time, notably of most of the forms of oaths contained in it.*

In this book is found the form as follows:

"*The Oath of the Attorneys in the Office of Pleas.*"

"You shall doe noe Falshood nor consent to anie to be done in the Office of Pleas of this Courte wherein you are admitted an Attorney. And if you shall knowe of anie to be done you shall give Knowledge thereof to the Lord Chiefe Baron or other his Brethren that it may be reformed you shall Delay noe Man for Lucre Gaine or Malice you shall increase noe Fee but you shall be contented with the old Fee accustomed. And further you shall use your selfe in the Office of Attorney in the said office of Pleas in this Courte according to your best Learninge and Discrecion. So helpe you God."

No original record of the oath of an attorney-at-law other than the foregoing oath from the Red Book is now to be found, but such an oath was doubtless framed and in use certainly from the time of the Act of Henry IV. in 1402, and the form of this oath, which it will be observed follows the provisions of that Act, is found in a rare and curious book

* Introduction to the Red Book of the Exchequer, Part I. Edited by Hubert Hall of the Public Record Office, 1896.

printed in 1649, called "The Book of Oaths," the title-page of which illustrates the view then taken of official oaths. It is as follows:

THE

BOOK OF OATHS,

AND

The ſeverall forms thereof,
both Antient and Modern.
Faithfully Collected out of
ſundry Authentike Books and
Records, not heretofore extant,
compiled in one Volume.
Very uſeful for all perſons whatſoever,
eſpecially thoſe that undertake any Of-
fice of magiſtracie or publique Imploy-
ment in the Common-wealth.
Whereunto is added a perfect Table.

NUMB. 30. 2. *If a man vow a vow unto the Lord, or ſweare an oath to bind his ſoule with a bond: he ſhall not breake his word, he ſhall doe according to all that proceedeth out of his mouth.*

HEB. 6. 16. *For men verily ſweare by the greater, and an oath for confirmation is to them an end of all ſtrife.*

Printed at London for W. LEE, M. WALBANCKE,
D. PAKEMAN, and G. BEDLE. 1649.

This oath, found on page 29 of the Book of Oaths, is as follows:

The Oath of an Attorney-at-Law.

You shall doe no falshood, nor consent to any to be done in the Court, and if you know of any to be done you shall give knowledge thereof unto my Lord Chiefe Justice, or other his Brethren, that it may be reformed; you shall delay no man for lucre or malice; you shall encrease no Fees, but shall be contented with the old Fees accustomed; you shall plead no Forraigne Plea nor suffer no Forraigne Suits unlawfully to hurt any man, but such as shall stand with order of the Law, and your conscience; you shall seale all such Processe as you shall sue out of the Court with the Seale thereof, and so the Kings Majesty, and my Lord Chiefe Justice discharged for the same; yee shall not wittingly nor willingly sue, nor procure to be sued any false Suit, nor give ayde, nor consent to the same, in paine to be expulsed from the Court for ever; And furthermore, you shal use your selfe in the Office of an Attorny within the Court according to your Learning and discretion; so helpe you God, etc.

A second edition of this book was printed in 1689, and contains the Attorney's Oath in the same form.

The following oaths of office taken from the Book of Oaths in the office of the Clerk of the Crown and the Petty Bag in Chancery, now deposited in the Record Office, are of interest as conforming substantially to the Oaths of the King's Serjeants and the Serjeants at Law:

King's Counsel.

Ye shall Swear, That well and truly ye shall serve the King as one of his Council learned in the Law, and

truly counsel the King in his Matters when ye shall be called, and duely and truely minister the King's Matters and sue the King's Process after the Course of the Law, and after your Cunning; ye shall take no Wages nor Fee of any Man for any Matter against the King, where the King is Party; ye shall duely, in convenient Time, speed such Matters as any Person shall have to do in the Law against the King, as ye may lawfully do, without long Delay, tracting or tarrying the Party of his lawfull Process in that that to you belongeth; ye shall be attendant to the King's Matters when ye shall be called thereto; as God you help, and by the Contents of this book.

Attorney General.

Ye shall Swear, That well and truly ye shall serve the King as his Attorney General, in all his Courts of Record, within the Kingdom of Great Britain and truly counsell the King in his Matters when ye shall be called, and duly and truly minister the King's Matters, and sue the King's Process after the Course of the Law, and after your Cunning; ye shall take no Wages nor Fee of any Man for any Matter against the King, where the King is Party; ye shall duely, in convenient time, speed such Matters as any Person shall have to do in the Law against the King, as ye may lawfully do without long delay, tracting or tarrying the Party of his lawful Process in that, that to you belongeth; ye shall be attendant to the King's Matters when ye shall be called thereto; as God you help, and by the Contents of this Book.

Solicitor General.

Ye shall Swear, That well and truly ye shall serve the King as his Solicitor General in all his Courts of Record within the Kingdom of Great Britain, and truly counsell

> the King in his Matters when ye shall be called, and duly and truly minister the King's Matters, and sue the King's Process, after the Courses of the Law, and after your Cunning; ye shall take no Wages nor Fee of any Man, for any Matter against the King, where the King is Party; ye shall duely, in convenient Time, speed such Matters as any Person shall have to do in the Law against the King, as ye may lawfully do, without long Delay, tracting or tarrying the Party of his lawfull Process, in that, that to you belongeth; ye shall be attendant to the King's Matters when ye shall be called thereto; as God you help, and by the Contents of this Book.

There is much curious learning in the early English Law with regard to serjeants-at-law, apprentices and barristers. Fortescue, who was Chief Justice to Henry VI., in "*De Laudibus Legum Angliae*," devotes a chapter to the "State, Degree and Creation of a Serjeant-at-Law," in which he says at the end:

> "There is not, in any other Kingdom or State, any particular Degree confer'd on the Practisers of the Law *as such;* unless it be in the Kingdom of *England.* Neither does it happen, that in any other Country, an *Advocate* enriches Himself so much by his Practice as SERJEANT AT LAW. No one, be he never so well read and practised in the Laws, can be made a Judge in the Courts of *King's Bench*, or the *Common Pleas*, which are the Supreme Ordinary Courts of the Kingdom, unless He be first called to be a SERJEANT AT LAW: Neither is any one, beside a SERJEANT, permitted to plead in the Court of *Common Pleas*, where all real

Actions are pleaded: Wherefore, to this Day, no one hath been advanced to the *State* and *Degree* of a SERJEANT AT LAW, till He hath been first a (1) *Student*, and a *Barrister*, full Sixteen Years: Every SERJEANT wears in Court a *White Silk Coif*, which is a Badge that they are *Graduates in Law*, and is *the Chief Ensign of Habit* with which SERJEANTS AT LAW are distinguished at their Creation. Neither shall a *Judge*, or a SERJEANT AT LAW, take off the said *Coif*, tho' he be in the Royal Presence and talking with the King's Majesty."

In the notes upon Fortescue, in the edition of 1741 it is said:

"It may be objected here that our Author makes no mention of *Student* or *Barrister*, neither is it precisely known whether, at that Time, the Degree of *Barrister* was confer'd or not, but it is very probable that the same regular Steps might be taken, in order to qualify Persons to practice in the Courts of Law, as have been observed since that Time. The Reason is the same. *Mr. Selden*, in his Note ad Cap. VIII. (2) makes mention of the *Students in the Civil Law* of 2, 3, 4 and 5 Years standing, and seems to hint that an APPRENTICE AT LAW is a Degree; He quotes 1 *Ed.* 3 fol. 17, a. pl. 3, also a Monument of Parliament 20 *Ed.* 1. *Fleta*, lib. 2. cap. 37, and the Epistle of the 9 *Reports*, where more is out of Antiquity touching these APPRENTICES, whom I judge to be, what they now call, BARRISTERS."

Also that

"Serjeant at Law imports one who attends the Service

of the King and his People in the Study, Profession and Practice of the Law: A *State* and *Degree* in the Law, out of which, as the Seminary of Justice, the Judges are called; for none but a Serjeant at Law can be a Judge of either Bench, or Chief Baron of the Exchequer. The Honour of *Serjeancie* is a *Title*, *State* and *Dignity* of great Respect, as appears from the King's Writ, or Patent of his Creation. The Lord *Coventry*, in his Speech at the Creation of Serjeants, says, 'It is a very ancient *State* and *Degree*, so ancient, that Books are as silent in it as in the Commencement of the Common Law its self.'" *

The order of serjeants-at-law was so well established that Chaucer introduced a serjeant-at-law into that company of Pilgrims whom he made to set out from the Tabard Inn in Southwark, in 1383, as follows:

"A Serjeant of the Law, prudent and wise,
That had often been at consultation, †
There was also, ful rich of excellence.
Discreet he was and of great reverence:
He seemed such, his words were so wise.
Justice he was full often at Assise,
By patent and by pleine commission:
For his science and for his high renown.

* De Laudibus Legum Angliae. Notes of Selden, etc. Edition 1741, pages 113, 115, 116. See also Antiquities of the Inns of Court and Chancery (Herbert), page 358, *et seq.*; Order of the Coif (Pulling); Observations Touching the Antiquity and Dignity of the Degree of Serjeant-at-Law (Wynne); Lives of the Chancellors (1712) Vol. II.; Whitelocke's Memorials.

† The original reading is "at the parvis," meaning the porch of St. Paul's or of Westminster Abbey, where lawyers were wont to meet their clients for consultation. In this case, as in some others in the passage, I have ventured to put, in place of the original words, a modern form, more easily understood now, but which, I trust, preserves the author's meaning.

Of fees and robes had he many an one;
So great a conveyancer was nowhere known.
All was fee simple to him in effect,
His conveyancing could not be attacked.
Nowhere so busy a man as he there was,
And yet he seemed busier than he was.
In terms had he cases and decisions all
That from the time of King William had been given;
Thereto he could endite and make a thing,
There could no wight cavil at his writing;
And every statute knew he fully by rote
He rode but homely in a motley coat
Girt with a sash of silk with small bars."

When the degree of a serjeant-at-law was conferred, it was the custom for the Lord Commissioner appointed by the King to confer it, to address the candidates upon the character of their office and its duties. The address of Lord Commissioner Whitelocke to the new serjeants-at-law, November 18, 1648, when they appeared at the Chancery Bar to take upon them the degree, states the nature of the lawyer's office and its duties as then understood. He said:

"I hold it not impertinent to mention something to you of the duties of an advocate; which are some of them to the courts and some to the clients.

"To the courts of justice he owes reverence, they being the high tribunals of law, of which Doctor and Student, and the statute of Marlebridge saith, Omnes, tam majores quam minores, justitiam recipiant;* and therefore great respect and reverence is due to them from all persons, and more from advocates than from any other.

"2. An advocate owes to the court a just and true

* Let all, as well the greater as the smaller, receive justice.

information. The zeal of his client's cause, as it must not transport him to irreverence, so it must not mislead him to untruths in his information of the court. The statute of Will. 1, Chap. 29, and the Mirrour of Justices, agree in an excellent direction in this point.

" 'When a good cause is destroyed by misinformations or unlawful subtleties or deceits, let the instruments thereof take heed of the wo denounced by the Prophet against them that call good evil and evil good, that put darkness for light and light for darkness, their root shall be rottenness, and shall go up as dust.'

" Remember that in your oath for one verb [you shall serve] you have two adverbs [well and truly].

" The duties of advocates to their clients are general and particular.

" The general consist in three things, — secrecy, diligence, and fidelity.

" 1. For secrecy: advocates are a kind of confessors, and ought to be such, to whom the client may with confidence lay open his evidences, and the naked truth of his case, sub sigillo, and he ought not to discover them to his client's prejudice; nor will the law compel him to it.

" 2. For diligence: much is required in an advocate in receiving instructions, not only by breviats, but by looking into the books themselves, in perusing deeds, in drawing conveyances and pleas, in studying the points in law, and in giving a constant and careful attendance and endeavour in his clients' causes.

" 3. For fidelity: it is accounted vinculum societatis. The name of unfaithfulness is hateful in all; and more in advocates than others, whom the client trusts with his liveli-

hood, without which his life is irksome; and the unfaithfulness or fraud of the one is the ruin of the other.

"Virgil, in his fiction of Æneas going down to Hell, sets these in the front of crimes, —

> "Hic, quibus invisi fratres, dum vita manebat,
> Pulsatusve parens, et *fraus innexa clienti*,
> Inclusi poenam expectant." *

"For your duty to particular clients you may consider, that some are rich, yet with such there must be no endeavour to lengthen causes, to continue fees. Some are poor, yet their business must not be neglected if their cause be honest; they are not the worst clients, though they fill not your purses, they will fill the ears of God with prayers for you, and he who is the defender of the poor will repay your charity. Some clients are of mean capacity; you must take more pains to instruct yourself to understand their business. Some are of quick capacity and confidence, yet you must not trust to their information. Some are peaceable, detain them not, but send them home the sooner. Some are contentious, advise them to reconcilement with their adversary. Amongst your clients and all others, endeavour to gain and preserve that estimation and respect which is due to your degree, and to a just, honest, and discreet person. Among your neighbours in the country, never foment but pacify contentions."

. . . . . .

"And what honour and advantage hath been gained by any the most eminent of your predecessors in this degree, I do heartily wish may be multiplied unto you." †

* Here, those who, while alive, hated their brothers, beat their parents, or defrauded their clients, imprisoned, await punishment.

† Whitelocke's Memorials, 352–3–4–5. Manning's Serjeants' Case, pages 222–3–4–6.

Upon this foundation of the English law and this conception of the lawyer's office in England, the office was established in the Colonies and Provinces of England in North America.

An examination of the legislation as to attorneys in the Colonies which became the thirteen original States of the Union, shows how the attorney's office was recognized and established here.

It should be borne in mind, however, in considering this legislation that by the ancient English common law no person had a right to appear in Court by an attorney. A litigant could advise with and retain the "man of lawe," who might lawfully "stand by him" as his counsel, but could not represent him in all the responsibilities of litigation, devolved on the suitor, *in propria persona*.

In the Harleian MSS. in the British Museum (298, fo. 56), is the following entry of a plea pleaded by Serjeant Marshall in an action (the nature of which does not appear), pending in the King's Bench at Oxford, T. 25 Edw. I.: "And then Thomas le Mareschall says, that he is a common serjeant-countor before justices *and elsewhere, wherever he can be most serviceable in his office* of a common serjeant-countor (coram justiciariis, et alibi, ubi melius ad hoc conduci poterit), and that he, in the plea of the said assise, *stood with* * the said John before the said justices, and assisted him

* A German equivalent for advocate, used even to this day, is *Rechtsbeistand;* literally, he who stands by (another) in matters of justice and law.

Moriz Heyne, Deutsches Wörterbuch, Volume 3 (1895), column 49, says:

Rechtsbeistand (1) = Beistand in einer Rechtssache: einen Rechtsbeistand leisten; (2) = Person die solchen leistet, e.g., Rechtsbeistand sein; einen Rechtsbeistand mitbringen.

Literal translation:

Right-stand-by (1) = stand-by (*i.e.*, help) in a matter of law, as *e.g.*, to give legal

herein, as much as he could, as his serjeant (tanquam serviens suus), and as it is lawful for such serjeants in such cases (et sicut talibus servientibus in hujusmodi casibus, licet)."

In the Abbreviatio Placitorum in Domo Capitulari Westm. asservat. 295 b, is the following entry, respecting an advocate in the ecclesiastical courts: "Master William de Helmeswell, and Master John de Maldone; were attached to answer William de Welleby of a plea of conspiracy. . . . And Master John says that he is a *common advocate*, and stood with the said Master William for his giving (quod est communis advocatus, et *stetit* cum predicto Magistro Willielmo, pro suo dando), against the said William de Welleby. Master William says, that he caused him to be cited for another trespass, and not for the first. But, by the jury, — he is guilty, to the damage of the said William de Welleby of twenty-four marks. And Master John is acquitted, *because he is a common advocate*." *

According to the old Gothic constitution every suitor was obliged to appear in person; and by the ancient common law of England a party plaintiff or defendant could not

assistance. (2) = the person who performs such duty, *e.g.*, to be a right-stand-by; to bring along (into court) a right-stand-by.

In other words, Rechtsbeistand means (1) legal assistance, and (2) legal assistant, *i.e.*, legal representative or standby of another person in court.

Grimm, Deutsches Wörterbuch, Volume 8 (1893), column 424:

Rechtsbeistand: (1) Beistand, der bei einer Rechtshandlung oder vor Gericht geleistet wird. The formula in legal documents is: Vor dem Notar N. erscheint die Ehefrau N. unter Rechtsbeistand ihres Ehegatten. (2) Person, die einen solchen Beistand leistet: thus, sein Rechtsbeistand, der Anwalt N.

Translation:

Right-stand-by. (1) Assistance given in a legal action or in court. The formula in legal documents runs thus: Before the Notary N. appears the wife N. with the legal assistance of her husband. (2) Person who gives such assistance: thus, his right stand by (legal adviser), the attorney N.

* Serviens ad Legem, James Manning, page 170.

appear in Court by an attorney without special authority from the King, by writ or otherwise. But when a party had made his personal appearance, any Court which had jurisdiction *by writ*, might permit the party to appear by attorney, and a Court which held jurisdiction without a writ might admit an attorney if the King permitted, but not otherwise. *

This probably was the reason why in the early colonial statutes the right of parties to appear by attorneys was expressly given. It is true that there were men of law, and pleaders, as they were called, in England from time immemorial, and when William the Conqueror in order to obtain an authentic record of the laws and customs of England called together a body of English nobles, he also called with them English lawyers to report on the subject; but it was not until after the Conquest when justice was administered in England in a form as well as a language unknown to the English, that the employment of lawyers to represent suitors became absolutely necessary. It was then that the English word "pleader" gave way to the Norman word "conteur," or in English "countors," and the profession of the law was placed under legal rules of conduct.

It is interesting to note, however, that in the early days of the English law the lawyer stood in direct relation to his client, as is now the case in the United States. The modern English Barrister has no *clients*. He recognizes only Solicitors through whom alone the client can communicate with him. But the ancient English lawyer knew no solicitor or middle man. He communicated directly with his client at his chambers, at the Parvis, in the Court, or wherever he

* Stjernhöök de Jur. Goth I. 1, c. 6; 8 Coke, 58, b.; Maugham on Attornies, page 6.

could best serve him, and served him in any capacity he could, either as counsel, draftsman, or advocate.*

The administration of justice was probably quite as well served by this simple relation of lawyer and client as it is by the complicated and expensive methods of the English practice now.

Parties were first permitted to appear by attorneys by the Statute of Merton,† A.D. 1235, in certain cases.

In 1275 [1] by the Statute Primer Westminster, appearance by attorneys was recognized and extended.

In 1278,[2] 1285,[3] 1318,[4] 1322,[5] 1383 [6] statutes were passed extending the right to appear by attorneys, and in 1402 the first act was passed providing for the admission of attorneys by the Courts upon examination and the administration of an official oath, and also for the regulation by the Courts of the conduct of attorneys.‡

By the ancient statutes attorneys were required to appear in Court in person at stated periods, and if they did not for two years give due attendance in any case or matter they were put out of the roll and could not practice until they were again admitted. The reason of this doubtless was that it was thought attorneys ought not to practice in the Courts unless they kept themselves practically qualified for the duties of their office.

The legislation in the different States as to the lawyer's oath has been substantially as follows :

* Pulling, Order of the Coif, page 71.
† 20 Hen. 3, St. Merton, c. 10.
[1] 3 Edw. 1, st. 1 Westm., c. 29.
[2] 6 Edw. 1, st. Gloucester, c. 8.
[3] 13 Edw. 1, st. 1, Westminster 2, c. 10.
[4] 12 Edw. 2, st. 1, c. 1.
[5] Statute of Carlisle, 15 Edw. 2, st. 1.
[6] 7 Richard 2, c. 14.
‡ 4 Hen. 4, c. 18.

IN CONNECTICUT.

The lawyer's office was recognized and an official oath prescribed in Connecticut in May, 1708, by an act as follows:

> "For the better regulating proceedings and pleas at the bar of the several countie courts or courts of assistants within this government,
>
> "*It is ordeined by this Court and the authoritie thereof*, That no person, except in his own case, shall be admitted to make any plea at the bar, without being first approved of by the court before whom the plea is to be made, nor until he shall take in the said court the following oath, viz.:
>
> "You shall do no falshood, nor consent to any to be done in the court, and if you know of any to be done you shall give knowledge thereof to the justices of the court, or some of them, that it may be reformed. You shall not wittingly and willingly promote, sue or procure to be sued any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre or malice, but you shall use yourself in the office of an Atturney within the court according to the best of your learning and discretion, and with all good fidelitie, as well to the court as to the client. So help you God." *

This form of oath was included in the Forms of Oaths Prescribed and established in 1729. †

* Conn. Colony Records, Vol. 5, page 48.

† Acts and laws of Connecticut in New-England in America. Edition of 1750, page 180. General Assembly held at New-Haven on the 9th of October, 1729.

The form now in use is substantially the same. It is as follows:

> "You solemnly swear that you will do no falsehood, nor consent to any to be done in court, and if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed; you will not wittingly or willingly promote, sue, or cause to be sued, any false or unlawful suit, or give aid, or consent, to the same; you will delay no man for lucre or malice; but will exercise the office of attorney, within the court wherein you may practice, according to the best of your learning and discretion, and with fidelity, as well to the court as to your client; so help you God." *

* General Statutes of Conn., 1902, Section 4795.

IN DELAWARE.

In 1704 the admission of lawyers and their oath of office were provided for by "An Act about Attornies and Solicitors," as follows:

> For preventing abuses and irregularities in all and every the courts within this her Majesty's government, and that all Attornies and Solicitors practising therein may be duly qualified to execute and perform the trust in them reposed:

Section 1. Be it enacted by the honorable John Evans, esq. with her Majesty's royal approbation Lieutenant Governor of the counties of New-Castle, Kent, and Sussex, upon Delaware, and province of Pennsylvania, by and with the advice and consent of the freemen of the said counties, in General Assembly met, and by the authority of the same, That before any Attorney, Solicitor, or other person whatsoever, shall be admitted to plead for any reward or fee in any of the courts of this her Majesty's government, such Attorney, Solicitor, or other person as aforesaid, shall take the oaths, and repeat and subscribe the declaration prescribed by act of Parliament in England;* and shall take the oath hereafter mentioned, viz. You shall do no falsehood or deceit, nor consent to any to be done, in this court, to your knowledge; and if you know of any to be done, you shall give knowledge thereof to the Chief Justice, or any other the justices of this court, that it may be reformed: You shall delay no man for lucre or malice, having reason-

*An act for the security of her majesty's person and government, and of the succession to the crown of Great-Britain in the protestant line.

able fees first allowed you for the same: You shall plead no foreign plea, nor sue any foreign suits, unlawfully, to the hurt of any man, but such as shall (according to your judgment) stand with the order of the law and your own conscience: You shall not wittingly or willingly sue, or procure to be sued, any false suits, nor give aid or consent to the same, on pain of being expulsed from this court for ever. And further, You shall truly use and demean yourself in the office of an attorney within this court, according to your learning and discretion. So help you God.*

In 1721 this form of oath was changed by

An Act for the establishing courts of law and equity within this government, as follows:

. . . That there may be a competent number of persons of an honest disposition, and learned in the law, admitted by the justices of the said respective courts, to practice as Attornies there, who shall behave themselves justly and faithfully in their practice, and before they are so admitted, shall take the following qualification, —

Thou shalt behave thyself in the Office of an Attorney within the court according to the best of thy learning and ability, and with all good fidelity as well to the court as to the client: Thou shalt use no falsehood, nor delay any person's cause through lucre or malice.

Sect. 27. And if they misbehave themselves therein, they shall suffer such penalties and suspensions as Attornies at Law in Great Britain are liable to in such cases. By which Attornies actions may be entered, and writs, process, decla-

* Laws of the State of Delaware. Edition of 1797, Vol. 1, Chap. XIII., Sect. 1, 1704.

rations and other pleadings; and records in all such actions and suits as they shall respectively be concerned to prosecute or defend from time to time, may be drawn, and with their names and proper hands signed; which said Attornies, so admitted, may practice in all the courts of this government, without any further or other licence or admittance.

Sect. 28. Provided always, That no person, not being an inhabitant of this government, or of the province of Pennsylvania, shall be permitted to plead in any court or courts within this government, without licence first obtained from the Governor for the time being, by the recommendation of the Justices of one of the County Courts of this government; unless such lawyer or lawyers shall obtain the court's leave, and pay to the said court, for the use of the Governor, the sum of Fifty Shillings for each court he shall so plead, until licensed.*

The present law as to admission and oath of Attorneys is as follows:

"There may be a competent number of persons, of an honest disposition and learned in the law, admitted by the judges of the respective courts to practice as attornies there, who shall behave themselves justly and faithfully in their practice; and if they misbehave themselves therein, they shall suffer such penalties and suspensions as attornies at law in Great Britain are liable to. Such attornies may enter actions, prosecute and defend suits, draw writs, process and pleadings, and practice generally in all the courts of this State without further license.

* Laws of the State of Delaware. Edition of 1797, Vol. 1. Chap. LIV., Sect. 26, 27, 28. 1721.

"Every attorney-at-law shall, in like manner, besides the constitutional qualifications, make the following affidavit:

> "'I _____ do solemnly swear (or affirm) that I will behave myself in the office of an attorney within the court, according to the best of my learning and ability and with all good fidelity, as well to the court as to the client; I will use no falsehood, nor delay any person's cause through lucre or malice. So help me God (or so I affirm).'" *

The present provision as to the admission or obligation of attorneys is the same as provided by the Act of 1721, and the oath is the same, but in addition there is required an oath to support the Constitution of the State.†

* Revised Statutes of Delaware, 1893, Chap. XCII., page 698; Chap. XXIV., Sect. 4.
† Laws of Delaware, Revised Code, 1893, pp. 234, 698.

IN GEORGIA.

The following sections of the English act of 1729 "For the Better Regulation of Attorneys and Solicitors," * were treated as in force in Georgia in 1731:

"XIII. And it is hereby further enacted by the authority aforesaid, That every person who shall, pursuant to this act, be admitted and enrolled to be an attorney in the said courts of king's bench, common pleas, exchequer, great sessions in Wales counties palatine of Chester, Lancaster and Durham, or any inferior courts of record wherein attorneys have been accustomably admitted and sworn, shall, before he is admitted and enrolled as aforesaid, take and subscribe the oath following, instead of the oath heretofore usually taken by the attorneys of such courts respectively.

"'I, A. B. do swear, that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability, so help me God.'

"XIV. And it is hereby further enacted by the authority aforesaid, That every person who shall, pursuant to this act, be admitted and enrolled to be a solicitor in the said high court of chancery, or in any of the other courts of equity aforesaid, shall, before he shall be so admitted and enrolled, take and subscribe the oath following, viz.:

"'I, A. B. do swear, that I will truly and honestly demean myself in the practice of a solicitor, according to the best of my knowledge and ability, so help me God.'

"Remainder of this statute not in force. 2nd year of George II., A.D. 1729." †

* English Statutes at large, Vol. 4, page 654.

† Schley's Digest of the English Statutes in force in the State of Georgia. Edition of 1826, page 353.

In 1789, after Georgia became a State, the admission of attorneys was provided for in

"An act regulating the judiciary departments of this State," as follows:

"LXV. And be it enacted, That no person shall be allowed to practice or plead in any of the superior or inferior courts, until examined in open court, and admitted by one or more of the judges of the superior court: Provided, That the persons heretofore admitted shall not be deprived by this act from practicing in either court; but the justices may suspend, and the judges or either of them may try an attorney for malpractice in his profession. And all fines, forfeitures and penalties imposed by this or any other act, shall be recovered in the most usual or summary way."*

The Superior Courts of Georgia were vested with jurisdiction both in law and in equity, and as the same persons acted both as attorneys and solicitors in those Courts, the oaths prescribed by the English statute of 1729 were amalgamated, and the Judges of the Superior Court in convention prescribed the following form as an oath to be administered to all persons admitted to practise law:

"I, A. B. do solemnly swear [or affirm as the case may be] that I will justly and uprightly demean myself according to law, as an attorney, counsellor, and solicitor," to the best of my knowledge and ability; "and that I will support and defend the constitution of the United States, and the constitution of the state of Georgia — So help me God."

* Digest of the laws of Georgia. Edition of 1801, page 406.

For some time after Georgia became a State, attorneys from other States were not admitted to practice until they had resided in Georgia two years. But in 1795 it was provided that attorneys at law who were citizens of and had been regularly admitted to the practice of the Superior Courts of law and equity in other States should, on complying with the other regulations required by the laws of Georgia for the admission of attorneys, be admitted to practice without having resided two years within the State of Georgia.

But the act which allowed this provided specifically that "no attorney or attornies shall be allowed to practise in the courts of this state, as aforesaid, unless he or they do actually reside within the limits of the same. Provided also, That such applicants from other states, shall previous to their admission in this state, produce to the judge or judges of the superior courts of this state, a certificate of his regular admission to the superior courts in the state from which such applicants may come, together with a certificate of his fair moral and professional character, duly certified under the seal of the state where he shall have been admitted, and shall also undergo a strict examination as to his professional abilities, before a judge or judges of the superior court." *

The rules of Court as to the admission of attorneys originally provided that no person could be admitted to practise as an attorney without having studied a certain time in the office of some Judge or practitioner of law in Georgia, but in 1806 an act was passed which provided that any citizen of Georgia might on application to the Judge of the Superior

* Digest of the laws of Georgia. Edition of 1802, page 41.

Court be admitted to practice "Provided, such person shall produce satisfactory evidence of his moral rectitude, and shall undergo an examination in open court, upon a day assigned for that purpose, by the judge." *

* Compilation of the Laws of Georgia, 1800-1810. Edition of 1813, page 331.

IN MARYLAND.

An act was passed in Maryland in 1714 regulating the fees and conduct of attorneys as follows:

> "And be it further Enacted by and with the Authority, Advice and Confent aforefaid, That all Attornies practifing in the feveral County Courts of this Province, fhall have for their Fee in any Caufe, where the real Debt fued for, or the Balance recovered, exceeds the Sum of Ten Pounds *Sterling*, or Two thousand Pounds of Tobacco, the Sum of Two hundred Pounds of Tobacco; and that any Attorney practifing in the faid Courts, that fhall refufe to profecute or defend the Caufe of any Perfon or Perfons making Application to him (unlefs before retained) having the faid Fee paid, or fecured to be paid to him, or that fhall ask, receive, or demand in any fuch Action, by any Colour or Pretext whatfoever, more than the faid Fee, fhall forfeit and pay the Sum of Five hundred Pounds of Tobacco; One Half thereof to our Sovereign Lady the Queen, for the Support of the Government, the other Half to him or them that will fue for the fame, to be recovered by Action of Debt, Bill, Plaint, or Information, wherein no Effoign, Protection, or Wager of Law to be allowed; and upon Conviction thereof to be fufpended his Practice in the faid Court, for and during One whole Year."*

The admission of attorneys was regulated in Maryland in 1715 by

* Acts of Assembly, passed in the Province of Maryland, from 1692 to 1715, page 83.

"An Act for rectifying the ill practices of attornies of this province, and ascertaining fees to the attorney-general, clerk of indictments, attornies and practitioners of the law in the courts of this province, and for levying the same by way of execution," as follows:

Sect. XII. And be it further enacted, by the authority, advice and consent aforesaid, That from and after the end of this present session of the assembly, no attorney, or other person whatsoever, shall practise the law in any of the courts of this province, without being admitted thereto by the justices of the several courts, who are hereby empowered to admit and suspend them (salvo jure coronæ) until his majesty's pleasure shall be known therein; but any attorney, or any other person practising the law in this province, or the Plaintiff that shall sue in any county court where he does not reside, shall be obliged to give security for the payment of all the officers fees that shall accrue upon any suit by him to be commenced, either at the time of the issuing of the writ in the action, or during the continuance of the court to which such writ shall be returned, on pain of paying such fees himself, or suffering his client to be nonsuited, in default of such security to be given, or of such attorney signifying his intention to pay such fees, any law, statute, usage, custom, rule of court, or order from any persons to the contrary notwithstanding.

Sect. XIII. Provided always, That nothing in this act shall extend, or be construed to extend, to give right to any courts of this province to admit any attorney, or other person practising the law, to practise in any court that has been already refused so to do by his excellency, and his

majesty's honourable council, nor to any person that shall not qualify himself by taking the oaths appointed to be taken by act of parliament made in the sixth year of the reign of her late majesty, of pious memory, entitled An act for the security of her majesty's person and government, and of the succession to the crown of Great-Britain in the protestant line.*

Admission to practice is now by the Court of Appeals under statutory provisions and the oath required by law is as follows:

"Every attorney or other practitioner at law shall in open court take and prescribe the following oath or affirmation: I do solemnly swear (or affirm) that I will at all times demean myself fairly and honorably as an attorney and practitioner at law; that I will bear true allegiance to the State of Maryland, and support the laws and constitution thereof, and that I will bear true allegiance to the United States, and that I will support, protect and defend the constitution, laws and government thereof as the supreme law of the land; any law or ordinance of this or any State to the contrary notwithstanding."

The conduct of attorneys is also specifically regulated by the following statutory provision:

"The judges of the several courts of this State shall observe the demeanor of all attorneys practising the law before them, who shall use any indecent liberties to the lessening the grandeur and authority of their respective

* The Laws of Maryland. Edition of 1811, Vol. 1, Chap. XLVIII., Sects. 12, 13.

courts, and shall discountenance and punish the same according to the nature of the offense, either by suspending such attorney from his practice perpetually, or for a time, or by fine (at the discretion of the court) not exceeding fifty dollars for any one offense." *

* The Maryland Code, 1904, Article X., pages 288–9.

IN MASSACHUSETTS.

It was many years after the Massachusetts Bay Colony was settled before a distinct class of attorneys-at-law was known. It is said to have been doubtful if there were any regularly educated attorneys-at-law who practised in the Courts of the Colony at any time.* The Colonists attempted to found a pure theocracy, and regarded the Bible as their statute-book, and the ministers as their lawyers. But by the Body of Liberties, the Massachusetts Magna Charta, of 1641, it was specially declared that

> "Every man that findeth himselfe unfit to plead his owne cause in any Court shall have Libertie to imploy any man against whom the Court doth not except, to helpe him, Provided he give him noe fee or reward for his paines." †

The want of suitable attorneys to present the cases of parties to the Courts led to the practice of parties going to the magistrates in person and stating their cases *ex parte*. And when an attempt was made to prevent this by law, it was opposed because parties would then be obliged to employ lawyers to present cases in Court. ‡

In 1649, however, a law was passed forbidding such conduct under penalties.§

The Colonists, however, were litigious people and if they could not find attorneys to present their cases they pre-

* Washburn, Judicial History Mass., page 50.

† Body of Liberties, Liberty No. 26, Whitmore Reprint, page 39.

‡ 2 Winthrop's History, 36.

§ Colony Laws, Edition 1814, Chap. 30 [p. 87]; Colonial Laws, Mass., Whitmore Edition, page 34.

sented them themselves, and so consumed the time of the Court and multiplied its business that in 1656 an act was passed providing that

> "This court, taking into consideration the great charge resting upon the colony, by reason of the many and tedious discourses and pleadings in court, both of plaintiff and defendant, as also the readiness of many to prosecute suits in law for small matters. It is therefore ordered, by this court and the authority thereof, that when any plaintiff or defendant shall plead, by himself or his Attorney, for a longer time than *one hour*, the party that is sentenced or condemned shall pay twenty shillings for every hour so pleading more than the common fees appointed by the court for the entrance of actions, to be added to the execution for the use of the country." *

The first direct regulation of lawyers in the Colonial Laws of Massachusetts is found in an order by the General Court in 1663 that "no person who is an usual and common Attorney in any Inferior Court, shall be admitted to sit as a Deputy in this Court."

This was because cases could then be taken by appeal from the inferior courts to the General Court, and it was not deemed proper that a common attorney in the inferior court should be a member of the General Court which passed upon the appeals from the Court in which he practised.

In 1673 it was ordered that any person might sue "by his lawful Attourny Authorized under his Hand and Seale,

* Washburn, Judicial History Mass., pages 52, 53.

and legally proved to be his Act and Deed" in any courts, and in 1679, that a Town could implead any person in a cause at law and choose their attorney by a vote without the necessity for a power of attorney under seal as in ordinary cases.*

In 1692 the act for the establishment of courts in the Province of Massachusetts Bay, which was disallowed by the Privy Council August 22, 1695, provided that the Justices of the several courts should have power to make necessary rules and orders for practice and proceedings therein, that all proceedings should be in the English tongue and no other, and that every plaintiff or defendant in any courts might "plead and defend his own cause in his proper person, or with the assistance of such other as he shall procure, being a person not scandalous or otherwise offensive to the court." †

In 1697 another act was passed for the establishing of courts, which was disallowed by the Privy Council November 24, 1698, with an additional provision that "attourney's fees to be allowed at the superiour court of judicature shall be twelve shillings and at the inferiour court ten shillings and no more; and but one attourney to be paid for in any case." ‡

In 1699 another act for the regulating and directing proceedings in Courts of Justice was passed, which was disallowed by the Privy Council October 22, 1700. This act contained the same provision as to attorneys as the act of 1697.§

The Attorney's oath as it was in use in England was adopted

* Mass. Col. Laws, 1672–1678, Whitmore Ed., pages 41, 211, 266.
† Province Laws, 1692–1714, Vol. I., page 75.
‡ Province Laws, 1692–1714, Vol. I., page 287.
§ Province Laws, 1692–1714, Vol. I., page 374.

by the Court in Massachusetts certainly as early as July 27, 1686. This appears by the following record:

"At his Majesty's Court of Pleas and Sessions of the Peace holden in Boston for Suffolk on ye 27th of July 1686 anno RRis Jacobi Angl[a] &c[a] Secundi Secundo.

"Present — Wm Stoughton Esq. Judge;

"John Pynchon, Wait Winthrop, Edw[d] Randolph, Richard Wharton, John Usher, Esqrs.

"John Richards, Esq., Simon Lynd, Assistants.

"Benj[a] Bullivant Esq[r] being appointed Attorney Generall Mr. Giles Master Mr. Anthony Checkley Mr. John Watson and . . . Capt Nathaniel Thomas and Mr. Christopher Webb being admitted attourneyes had the following Oath administered to them:

"You shall Swear That you will Do no falsehood nor deceit nor shall Consent to any to be done in this Court and if you know of any to be done you shall give knowledge thereof to the Judge of this Court for the time being or some other of his Majestyes Councill or assistants of this Court that it may be reformed. You shall delay no man for Lucre or Malice. You shall increase no fees but be Contented with such fees as are by order of Councill or the Judge of this Court allowed you, in time to come you shall plead no plea nor sue any suits unlawfully to hurt any man but such as shall stand with the Order of the Law and your Conscience. You shall not Wittingly or Willingly sue nor procure to be sued any false suits or give Aid or Consent to the same on pain of being expulsed from the Court for Ever and further you shall use and Demeane yourselves in the office of Attourneyes within the Court according to your Learning and discretion: So help you God."

"The Hon. William Stoughton, the chief presiding judge, had been a student at Oxford prior to 1663, and was afterwards in England from 1676 to 1679, as agent for the Colony."*

There was apparently, however, no statute with regard to the admission of attorneys at law to practice until 1701, when the following act was passed:

> "All attournys, commonly practising in any of the courts of justice within this province shall be under oath, which oath shall be administred to them by the clerk in open court before the justices of the same at the time of their being admitted to such practice, in the tenour following; that is to say, —
>
> "You shall do no falsehood nor consent to any to be done in the court, and if you know of any to be done you shall give knowledge thereof to the justices of the court, or some of them, that it may be reformed. You shall not wittingly and willingly promote, sue or procure to be sued any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre or malice, but you shall use yourselfe in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the court as to your clients. So help you God.
>
> "And the fee to be allowed for an attourney in the superiour court of judicature shall be twelve shillings, and in the inferiour court of common pleas ten shillings, and no more; and but one attourney to be paid for in any case. And none but such as are allowed and sworn

* Attorneys and their Admission to the Bar in Massachusetts, H. R. Bailey: p. 13.

attourneys as aforesaid shall have any fee taxed for them in bills of costs, any law, usage or custom to the contrary in any wise notwithstanding."*

In 1785 a further act was passed providing that no person should be admitted as an attorney unless of good moral character, well affected toward the government and qualified for the office, as follows:

"No person shall be admitted an Attorney of any Court in this Commonwealth, unless he is a person of good moral character, and well affected to the Constitution and Government of this Commonwealth, and hath had opportunity to qualify himself for the office, and hath made such proficiency as will render him useful therein; and no person shall be admitted to practice as an Attorney in any Court of Justice within this State, until he shall in open Court have taken and subscribed the declaration prescribed in the Constitution of this Commonwealth, and an oath, in tenor following:

"'You solemnly swear, that you will do no falsehood, nor consent to the doing of any in Court, and if you know of an intention to commit any, you will give knowledge thereof to the Justices of the Court or some of them, that it may be prevented: you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an Attorney within the Courts, according to the best of your knowledge and

* Province Laws, 1692–1714, Vol. I., page 467.

discretion, and with all good fidelity, as well to the Courts as your Clients.

'So help you GOD.'

"*And it is enacted*, That the parties may plead and manage their own causes personally, or by the assistance of such counsel as they shall see fit to engage; but the plaintiff or plaintiffs in any suit, shall not be allowed to manage their cause by more than two Attorneys, nor shall any defendant be allowed to employ a greater number." *

In 1836 it was provided that any citizen of the Commonwealth of the age of twenty-one years, and of good moral character, who should have devoted three years to the study of law in the office of some attorney within the State, or any person having such qualifications who should not have studied for the term of three years, but was recommended by any attorney within the Commonwealth to be examined for admission as an attorney, and upon such examination by the Court should be found qualified, might be admitted to practise in the Courts of the Commonwealth.

And it was also provided that

"Every person admitted as an attorney shall, in open court, take and subscribe the oaths to support the constitution of the United States, and of this Commonwealth, and the oath of office.

"The oath of office shall be as follows:

"You solemnly swear, that you will conduct yourself,

* Laws and Resolves of Massachusetts, 1785, Chapter 23.

in the office of an attorney, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts as to your clients. So help you God."

It was also provided that an attorney might be removed by the courts for deceit, malpractice, or other gross misconduct, and that not more than two persons for each party should without permission of the Court be allowed to manage any case therein.*

Why the original form of oath of office was changed in this revision does not appear, but in the revision of the laws in 1860 the original form of the oath of office was substantially restored, with the exception of the clause requiring the attorney if he knows of any falsehood in Court "to give knowledge thereof to the Judges of the Court, or some one of them, that it may be reformed." And the oath then provided and since in use is as follows:

"Whoever is admitted as an attorney shall in open court take and subscribe the oaths to support the constitution of the United States, and of this commonwealth, and the oath of office.

"The oath of office is as follows:

"You solemnly swear that you will do no falsehood, nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but

*Revised Statutes (1836), Chapter 88, Sections 19-27, inclusive.

you will conduct yourself in the office of an attorney within the courts, according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you God." *

Under the Act of 1785, the Supreme Court in March, 1806, and subsequently from time to time, established general rules for the admission of counsellors and attorneys, which rules were repealed and new rules made in 1810. These rules required the applicant for admission to have practised with fidelity and ability in the Court of Common Pleas for the term of two years before being eligible for admission as an attorney of the Supreme Court.†

The relation of a sworn attorney to the Court, and his powers as such attorney, were considered by the Supreme Court of Massachusetts in 1847, and the opinion by Chief Justice Shaw states the matter so fully that I quote from it.

The question raised was whether an agreement made by an attorney bound a client who was ignorant of it, and who offered to show that the attorney had not been, in fact, counsel in the case for some time, although his appearance had not been withdrawn from the docket. The Court held the agreement binding, saying:

"Nothing is more important, in a litigation in court, than for a party to know who is his adversary's accredited agent, and with whom he may safely deal in that capacity. Hence the great need, in all courts, of setting apart officers, recognized as attorneys, and determining their qualifications, rights

* General Statutes, Chap. 121, Sects. 30, 31; Public Statutes, Chap. 159, Sects. 35, 36; Revised Laws, Chap. 165, Sect. 42.

† See rules March Term, 1810, 6 Mass. Rept. 382.

and powers. When, therefore, an appearance is entered for a party, by a regular attorney, all parties have a right, *prima facie*, to regard him as the accredited representative of such party. . . .

"The importance of upholding agreements and concessions like the present, between attorneys and counsel of litigating parties, is greater than it might seem at first blush, and is enhanced by our present practice. In most cases of controverted facts, many facts are embraced in the issue, which are not really in dispute between the parties; but each must be prepared to prove all the facts necessary to his own case, unless he can previously obtain a concession from the adverse party, in a form which he can rely upon, at the trial. It is, therefore, a wise, useful and beneficial practice, resorted to by those who are most careful in preparing causes for trial, and a practice well deserving to be encouraged by the courts, for the parties, by their attorneys, to obtain and give mutual concessions, in writing, of all the material facts, not intended to be controverted, and so narrow the litigation to the precise matters in controversy. It saves expense, avoids surprise and delay, and often prevents the loss of a good cause, by an unexpected call for proof, which could easily have been obtained, if it had been anticipated that such fact would be called in question. This practice of admitting facts is the more necessary, since the disuse of special pleading, which was designed, and to some extent had the effect, to narrow the issue on record to some one or a few questions of fact. This consideration renders it important to hold, that a litigant party shall not be permitted to deny the authority of his attorney of record, whilst he stands as such on the docket. He may revoke his attorney's authority, and give

notice of it to the court and to the adverse party; but whilst he so stands, the party must be bound by the acts of the attorney.

"It was stated in the argument for the defendant, that though an attorney may bind his client, it is only by acts done in court. We cannot admit the correctness of this view. Many things may and ought to be done out of court, and in vacation, with a view to the proper conduct of the cause. All acts to be done by an attorney, without special directions, must be acts within the scope of his official authority and duty, in the proper conduct and management of the cause in which he is engaged; and this is the proper limit of his authority." *

It is interesting to note as a matter of history that in Massachusetts barristers were called by the Court, and the distinction between barristers and attorneys maintained for a long time. In 1768 there were twenty-five barristers in the Commonwealth and thirty-one more were called after that time. At that time only those who had been admitted and sworn as attorneys in the highest Court and had practised there for two years were eligible to be called as barristers.

In 1781 the Supreme Judicial Court, which was established by the Constitution of 1780, made the following order, which is upon its records:

> "Whereas Learning and literary accomplishments are necessary as well to promote the Happiness as to preserve the freedom of the People, and the Learning of the Law when duly encouraged and rightly directed, being as well peculiarly subservient to the great and

* Lewis *v.* Sumner, 54 Mass. (13 Met.) 271–273.

good Purpose aforesaid as promotive of public and private Justice; and this Court being at all times ready to bestow peculiar marks of approbation upon those Gentlemen of the Bar who by a close application to the Study of the Science they profess, by a mode of Conduct which gives a Conviction of the Rectitude of their minds, and a fairness of Practice that does Honor to the Profession of the Law, shall distinguish themselves as men of Science, Honor and Integrity:

"Do Order that no Gentleman shall be called to the Degree of Barrister until he shall merit the same by his conspicuous Learning, Ability and Honesty; and that the Court will of their own mere Motion call to the Bar such Persons as shall render themselves worthy as aforesaid; and that the manner of calling Barristers shall be as follows: The Gentleman who shall be a Candidate shall stand within the Bar. The Chief Justice or in his absence the Senior Justice shall in the name of the Court repeat to him the Qualifications necessary for a Barrister of the Law; shall let him know that it is a Conviction in the Mind of the Court of his being possessed of these Qualifications that induces them to confer this Honor upon him; and shall solemnly charge him so to conduct himself as to be of singular Service to his Country by exerting his abilities for the Defence of her Constitutional Freedom: and so to demean himself as to do Honor to the Court and Bar."

In 1783 an order was entered by the Court prescribing the form of writ to be issued to call a person to be a barrister, as follows:

"COMMONWEALTH OF MASSACHUSETTS

"To A. B., Esquire, of _____ Greeting: We Well knowing your Ability, Learning and Integrity Command you that you appear before our Justices of our Supreme Judicial Court next to be holden at _____ in and for our county of _____ on the _____ Tuesday of _____ next then and there in our said Court to take upon you the State and degree of a Barrister at Law. Hereof Fail not.

"Witness _____ Esq. our Chief Justice at Boston the _____ day of _____ in the year of our Lord _____ and in the year of our Independence _____.

By Order of the Court.

_____ Clerk."

The Court further ordered that the writ should be engrossed on parchment and delivered twenty days before the session of the Court by the sheriff of the proper county to the person to whom directed, and that the writ being produced in Court by the barrister, and there read by the Clerk, and proper certificate thereon made, should be redelivered to the barrister and kept as a voucher of his being legally called; and that barristers should take rank according to the date of their respective writs.

IN NEW HAMPSHIRE.

The first complete form of an attorney's oath which I have found in the English Colonies in America was that prescribed by an order of the President and Council of his Majesty's Territory and Dominion in America, in "An order for the holding of Courts and Execution of Justice," passed in 1686 in the old Town House in Boston, when Joseph Dudley was President. This act was passed in sections on different days.

Section 3, passed May 28, 1686, provided that

> "Such as from time to time shall be *allowed* and *sworn Attournyes* by the Council and County Courts (and they only to receive *Fees* and *plead* in any of His Majesties Courts), and no other presume to offer *Pleading*, save that every man is allowed to plead his own Case."

On July 26, 1686, it was also ordered as follows:

> "That the Oath following be administred to the Attourneys before they be admitted Attourneyes in Court.
>
> "You shall do no falshood nor deceit, nor consent to any to be done in this Court, and if You know of any to be done You shall give knowledge thereof to the Judge of this Court for the time being or Some other of his Ma'tys Councill, or Assistants of this Court that it may be reformed You shall delay no man for lucre or malice, You shall encrease no fees but be contented with Such ffees as are by Order of Councill or the Judge

of this Court allowed You, or that may be allowed You in time to Come. You shall plead no Plea, nor sue any Suits unlawfully to hurt any man, but such as shall stand w'th Order of the Law, and Your Conscience, You shall not wittingly or willingly sue, nor Pcure to be Sued any false Suite, nor give aid, or consent to the Same on paine of being expulsed from the Court for ever, And further You shall use and demean Your Selfe in Your office of an Attorny within the Court According to Your Learning & Discretion. So help You God." *

This oath was adopted by the Province of New Hampshire in 1714 by

. . . . . .

"An Act relating to Attornies" as follows:

Be it Enacted by His Excellency the Governor, Council, and Representatives, convened in General Assembly, and by the Authority of the same, That the plaintiff or defendant in any suit may plead or defend his cause by himself in his proper person, or with the assistance of such other person as he shall procure.

And be it further Enacted, That all attornies commonly practicing in any of the courts of justice within this province, shall be under oath, which oath shall be administered to them by the clerk in open court, before the justices of the same, at the time of their being admitted to such practice in the tenor following. That is to say,

You shall do no falsehood, nor consent to any to be done in the court, and if you know of any to be done, you shall

* Laws of New Hampshire, Province Period, 1679-1702, Vol. I., pages 105, 123.

give knowledge thereof to the justices of the court, or some of them, that it may be reformed. You shall not wittingly or willingly promote, sue or procure to be sued any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre, or malice, but you shall use yourself in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity, as well to the court as your client. So help you God.

And the fee to be allowed for an attorney in the superior court of judicature shall be twelve shillings, and in the inferior court of common pleas ten shillings, and no more; and but one attorney to be paid for in any case; and none but such as are allowed and sworn attorneys, as aforesaid, shall have any fee taxed for them in bills of cost: Any law, usage, or custom to the contrary in any wise notwithstanding.*

February 17, 1791, after New Hampshire became a State, the oath was adopted by the following act:

"An Act Relating to Attornies.

"Be it enacted by the Senate and House of Representatives in General-Court convened, That the plaintiff or defendant, in any cause, prosecution or suit, being a citizen of this State, may appear, plead, pursue or defend, in his proper person, or by such other citizen of this State, being of good and reputable character, and behavior, as he may

*Acts and Laws of His Majesty's Province of New-Hampshire in New England (1771), Chapter XXXVII., page 50.

engage and employ, whether the person so employed be admitted as an attorney at law, or not.

"And be it further enacted, That all attornies commonly practicing in any of the courts of justice within this State, shall be under oath, which oath shall be administered to them by the clerk, in open court, before the justices of the same, at the time of their being admitted to such practice, in the tenor following — That is to say,

"YOU solemnly swear, that you will do no falsehood, nor consent that any be done in court, and if you know of any, that you will give knowledge thereof to the justices of the court, or some of them, that it may be reformed; that you will not wittingly or willingly promote, sue or procure to be sued, any false or unlawful suit, nor consent to the same; you shall delay no man for lucre or malice, but shall act in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the court as your client. So help you GOD.

"And but one attorney to be taxed in any bill of cost, any law, usage or custom to the contrary notwithstanding."

The form now in use is as follows:

"Every attorney admitted to practice shall take and subscribe, in open court, the oaths to support the constitution of this state and of the United States, and the oath of office in the following form:

"You solemnly swear that you will do no falsehood, nor consent that any be done in the court, and if you know of any, that you will give knowledge thereof to the justices of

the court, or some of them, that it may be reformed; that you will not wittingly or willingly promote, sue, or procure to be sued any false or unlawful suit, nor consent to the same; that you will delay no man for lucre or malice, and will act in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the Court as your client. So help you God." *

* Public Statutes, N.H., Chap. 213.

IN NEW JERSEY.

The first reference to attorneys in the laws of New Jersey was contained (14th April, 1698) in

"Further Orders and Instructions to Jeremiah Basse, Esquire, Governor of the Province of East New-Jersey, in America, sent from London, by the Committee of the Proprietors there to be observed by the said Governor, viz.:

> "That you consent to pass a Law or Act of Assembly that no Attorney or other Person be suffered to Practice or plead for Fee or Hire, in any Court of Judicature, in any Suit or Cause or Process in Law whatsoever, but such as are admitted to Practice by Licence of the Governor of the Province for the Time being." *

In 1799, after New Jersey became a State, it was provided that every person of full age and sound memory might appear and prosecute or defend any action in Court in person, "or by his solicitor in chancery or attorney-at-law," but that no person, except in his own case or in the case of an infant, should appear and prosecute or defend any action but "such as is a licensed solicitor or attorney-at-law who shall be under the direction of the Court in which he acts."

And also

> "That if any counsellor, solicitor or attorney at law shall be guilty of malepractice in any of the said courts, he shall be put out of the roll, and never after be per-

*The Grants, Concessions, and Original Constitutions of the Province of New-Jersey, etc., page 223.

mitted to act or practice as a counsellor, solicitor or attorney at law, unless he shall obtain a new license and be again enrolled in due form of law."

The lawyer's oath, as prescribed in 1799, was first, the oath of allegiance:

"I, _____ do sincerely profess and swear, that I do and will bear true faith and allegiance to the government established in this state, under the authority of the people. So help me God."

and second,

"I, _____ do solemnly promise and swear, that I will faithfully and honestly demean myself in the practice of an attorney (or of a counsellor or solicitor, as the case may be) and will execute my office according to the best of my abilities and understanding. So help me God."

This oath of office was required to be taken and subscribed in open Court.*

The degree of Sergeant-at-law was recognized in New Jersey, and appointments made by rule of the Supreme Court in May, 1755. In 1763, however, it was ordered by the Court "that no person for the future shall practice as a Sergeant in this Court but those that are recommended by the Judges to the Governor for the time being, and duly called up by writ and sworn agreeably to the practice of England."

* Laws of New Jersey (1800), pages 355, 377.

In May, 1764, this rule was vacated, the number of Sergeants was subsequently fixed at twelve, and for a time examinations for admission to the Bar were conducted exclusively by the Sergeants. In 1839 the degree of Sergeant-at-law was abolished.* Lawyers were undoubtedly licensed and sworn by the Governor, in the Province of New Jersey, according to the English practice, and they are now licensed by the Governor upon recommendation by the Supreme Court after examination, which is provided for by rules of Court.

The rules of the Supreme Court require that an attorney or counsellor shall not be admitted unless he take the oath to support the Constitution of the United States and the oath of allegiance to the State, as well as the oath of office prescribed by law. The oath of office prescribed by law at the present time is as follows:

"That every counselor, solicitor or attorney-at-law, shall, before he be permitted to practice in any court of this state, take and subscribe in open court, the following oath, to wit:

> I, _____, do solemnly promise and swear, that I will faithfully and honestly demean myself in the practice of an attorney (or of a counselor or solicitor, as the case may be), and will execute my office according to the best of my abilities and understanding. So help me God."

The conduct of attorneys is specifically regulated by the following statutory provision the penalty in which is like that of the ancient English statute:

* The Supreme Court of the States and Provinces of North America (Bell.), Vol. I., Series 2, page 66.

"If any counselor, solicitor or attorney-at-law shall be guilty of malpractice in any of the courts, he shall be put out of the roll, and never after be permitted to practice as a counselor, solicitor, or attorney-at-law, unless he shall obtain a new license, and be again enrolled in due form of law." *

There is, however, no statute authorizing the Court to examine or the Governor to license persons as lawyers. Both rest upon immemorial custom. An interesting description of this matter is found in the case of Branch *et al.*, 70 N.J. Law, where the Court say:

"The Supreme Court of New Jersey neither licenses attorneys-at-law nor admits them to practice. They are invested with that privilege by letters-patent, issued by the governor of the state when he is assured that such licensees are possessed of the proper qualifications by a recommendation to that effect from the Supreme Court, based upon an examination made by it or under its supervision, which examination so made or supervised has, from the earliest periods, been a distinctive attribute of the Supreme Court, and as such existed in unqualified form at the time the constitution of 1844 was adopted. The power of the Supreme Court thus to examine, for itself, those whom it recommended for license, was therefore one of those 'powers' which in addition to its 'jurisdiction,' it was by that instrument authorized to 'continue.'"

* General Statutes of New Jersey, 1896, Vol. 2, pages 2330–2534.

IN NEW YORK.

The first legislation as to lawyers in the Province of New York was:

"An Act for Regulating the Retaining Attorneys at Law," passed October 22, 1695:

Whereas the Number of Attorneys at Law that practice at the Barr in this Province are but few and that many persons Retain most of them on one side to the great prejudice and discouragement of others that have or may have suits at Law to the end therefore that Justice may be Equally administred and no Room Left for Complaint be it Enacted by the Governour and Councill and Representatives Convened in Generall Assembly and by the Authority of the same that from and after the publication hereof that no person or persons That shall have any suit at Law in any of the Courts of Record Within this Province shall Retain more then two Attorneys at Law for the prosecution or management of any such Suit or process at Law that they shall have and if they Retain any more it shall be Lawful for the Justices of the bench where the Suit is Depending to order all such Attorneys as shall be Retained more than two as aforesaid to plead for the other side Without Returning the fee Received any thing Contained in this or any other Act To the Contrary hereof in any wise Notwithstanding, provided That this Act Nor any thing Contained therein shall Continue in force any Longer then two years After the publication hereof.*

* Colonial laws of New York, from 1664 to the Revolution. Edition of 1894, Vol. 1, page 351.

I think attorneys were admitted and sworn in New York until after the Revolution in the manner required by the English statutes and practice of the Courts. After New York became a State, however, their admission was regulated by

"An ACT concerning Counsellors, Attornies, Solicitors, Advocates, and Proctors of the several Courts in this State, Passed 20th February, 1787." This Act is so specific in its provisions and throws so much light on the practice of the law at that time that I give it in full as follows:

"I. Be it Enacted by the People of the State of New-York, represented in Senate and Assembly, and it is hereby Enacted by the Authority of the same, That it shall be lawful for all and every Person and Persons whomsoever, of full Age and sound Memory, other than Defendants in Cases where corporal Punishments may be inflicted, to make and appear by his, her or their Attorney or Attornies, in all and every or any Suit, Action or Plea, real or personal, moved or to be moved, by or against him, her or them, in any Court in this State; and to commence, pursue, prosecute or defend the same Suit, Action or Plea, in Person, or by his, her or their Attorney or Attornies.

"II. And be it further Enacted by the Authority aforesaid, That all Warrants of Attorney of the Parties, or of any or either of them, in all Suits, Actions and Pleas, in any Court of Record, shall be taken before the Judges or Justices of the respective Courts in which the same Suit, Action or Plea is or shall be depending, or one of them, or before the Chancellors of this State for the Time being, who shall certify and send the Warrants of Attorney before him taken, to

the Judges or Justices of the Court in which the Suit, Action or Plea is or shall be depending. And further, That such as cannot conveniently come before any or either of the Judges or Justices of the Court in which such Suit, Action or Plea is or may be depending, or before the Chancellor, to make his, her or their Attorney or Attornies in the same Suit, Action or Plea, may appear before such Judges, Justices or Chancellor, or either of them, by his, her or their Agent or Attorney, having sufficient Authority therefore in Writing, by Letter of Attorney or otherwise, from the Person or Persons in whose Behalf such Suit, Action or Plea is or may be depending; and in Cases where it may be necessary, shall have a Writ out of the Chancery to some sufficient Man, to receive his, her or their Warrant of Attorney in the same Suit, Action or Plea; and in all Cases where any Infant is or shall be entitled to any Suit or Action, some or one of the next Friends of such Infant shall be admitted, in Manner aforesaid, to sue and prosecute for such Infant. And if any Infant is or shall be impleaded, a Guardian shall be appointed, in Manner aforesaid, for such Infant, to defend the same Suit, Action or Plea, for the same Infant.

"III. And be it further Enacted by the Authority aforesaid, That no Person shall henceforth be admitted a Counsellor, Attorney, Solicitor, Advocate or Proctor, in any Court, but such as have been brought up in the same Court, or are otherwise well practised in soliciting Causes, and have been found, by their Dealings, to be skilful, and of honest Disposition; and that every Person hereafter to be admitted a Counsellor, Attorney, Solicitor, Advocate or Proctor of any Court, shall, before such Admission, be examined by the Judges or Justices of the same Court, and such only as shall

be found virtuous and of good Fame, and of sufficient Learning and Ability, shall be admitted, and their Names shall be put in a Roll or Book to be kept in each Court respectively, for that Purpose; and each and every Person so admitted shall, upon such Admission, in open Court, take and subscribe an Oath of Office in the Words following:

> 'I ——— ———, do swear, That I will truly and honestly demean myself in the Practice of an Attorney (or of a Counsellor, Solicitor, or Proctor, or of an Advocate, as the Case may be) according to the Best of my Knowledge and Ability.'

"IV. And be it further Enacted, by the Authority aforesaid, That if any Counsellor, Attorney, Solicitor, Advocate or Proctor of any Court, heretofore admitted, or hereafter to be admitted, shall be found notoriously in Default of Record or otherwise, he shall be put out of the Roll, and never after be received to act as a Counsellor, Attorney, Solicitor, Advocate or Proctor, in any Court. And further, That when any Attorney shall die, or cease to act, or be put out of the Roll of Attornies, the Persons for whom he was Attorney, shall be warned to appoint another Attorney in his Place, so that in the mean Time no Damage or Prejudice may come to the Party.

"V. And be it further Enacted by the Authority aforesaid, That if any Counsellor, Attorney, Solicitor, Pleader, Advocate, Proctor, or other, do any Manner of Deceit or Collusion, in any Court of Justice, or consent unto it in Deceit of the Court, or to beguile the Court or the Party, and thereof be convicted, he shall be punished by Fine and

Imprisonment, and shall moreover pay to the Party grieved, treble Damages, and Costs of Suit.

"VI. And be it further Enacted by the Authority aforesaid, That if any Attorney, Solicitor or Proctor, do or shall wilfully delay his Client's Suit, to work his own gain, or wilfully demand, by his Bill, any Sums of Money or Allowance for or upon Account of any Money which he hath not laid out or disbursed, or become answerable for, in every such Case the Party grieved shall have his or her Action against such Attorney, Solicitor or Proctor, and recover therein treble Damages and Costs of Suit: And such Attorney, Solicitor or Proctor, shall thereupon be put out of the Roll and be discharged from thenceforth from being an Attorney, Solicitor or Proctor any more.

"VII. And be it further Enacted by the Authority aforesaid, That no Attorney, Solicitor or Proctor, shall commence any Suit or Action for Recovery of any Fees, Charges or Disbursements, until eight Days after he shall have delivered to the Party to be charged therewith, or left for him or her, at his or her Dwelling-House, or last Place of Abode, a Bill of such Fees, Charges and Disbursements, written in a common legible Hand, in the English Tongue, (except Law Terms, and the Names of Writs, and in Words at length, except Times and Sums, and such Abbreviations as are commonly used in the English Language) subscribed with the proper Hand of such Attorney, Solicitor or Proctor.

"VIII. And be it further Enacted by the Authority aforesaid, That the Attorney for the Plaintiff or Demandant, in every Action or Suit, shall file his Warrant of Attorney with the proper Officer of the Court where the Cause is or shall be depending, the same Term he declares, and the

Attorney for the Defendant or Tenant shall file his Warrant of Attorney as aforesaid, the same Term he appears, upon Pain to forfeit, for every Neglect or Offence, the Sum of Ten Pounds, to be recovered by Action of Debt, Bill, Plaint or Information; the one Moiety thereof to the Use of the People of this State, and the other Moiety thereof to the Officer to whom or in whose Office the same Warrant should be delivered, entered or filed; and also to make Satisfaction to the Party grieved, according to the Discretion of the Court where any such Default or Neglect shall be had or made.

"IX. And be it further Enacted by the Authority aforesaid, That every Process for arresting, and every Writ of Execution, or some Label annexed, shall, before Service or Execution thereof, be subscribed or indorsed with the Name of the Attorney or Person by whom the same Process or Writ of Execution shall be sued forth.

"X. And be it further Enacted by the Authority aforesaid, That if any Attorney of any Court of Record, shall knowingly and willingly permit or suffer any other Person to sue out any Writ, or commence, prosecute or defend any Action or Suit, in his Name, and be thereof convicted, he shall be put out of the Roll of Attornies, and from the Time of such Conviction, be disabled to practice in such Court. And further, That as well the same Attorney as he who shall sue out any such Writ, or commence, prosecute or defend any such Action or Suit, shall each of them forfeit, for every such Offence, the Sum of Twenty Pounds; the one Moiety thereof to the People of this State, and the other Moiety thereof to the Party grieved; to be recovered by Action of Debt, Bill, Plaint or Information, in any Court of Record.

"XI. And be it further Enacted by the Authority afore-

said, That from and after the first Day of May next, no Clerk, or Register, or Deputy Register, of any Court, nor any Examiner, or Master of the Court of Chancery, shall act as a Counsellor, Attorney, Solicitor, Advocate or Proctor, in any Suit, Action or Matter in the same Court; and that no Under Sheriff, Sheriff's Clerk, Coronor or Bailiff, shall, during his Continuance in Office, act as Counsellor, Attorney, Solicitor, Advocate or Proctor, in any Court whatsoever. Provided nevertheless, That every such Clerk, Register, or Deputy Register, Examiner, or Master of the Court of Chancery, who now practises as Counsellor, Attorney, Solicitor, Advocate or Proctor, shall and may proceed to prosecute such Actions and Suits, in which he now is, or before the first Day of May next, shall be Attorney of Record, Solicitor or Proctor, until such Suit or Action is finally concluded." *

It will be noticed that the 4th, 5th and 6th sections of this act practically embody the provisions of the English Statute Primer Westminster. And if the provisions of the 5th and 6th sections were included in the oath of office required by the act, the oath would correspond very nearly to the official oath established in New Hampshire in 1686. The statute is also interesting as showing how carefully written authority by parties to attorneys was then required to be given by a warrant of attorney.

The only oath now required upon the admission of lawyers in New York is the oath of office prescribed by the Article XIII. of the Constitution to be taken by all officers and, as applied to lawyers, is as follows:

* Laws of New York. Edition of 1789, Vol. 2, page 64.

I do hereby solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York and that I will faithfully discharge the duties of the office of Attorney and Counsellor at Law in the Supreme Court of the State of New York according to the best of my ability.

IN NORTH CAROLINA.

The English statutes as to lawyers were observed in North Carolina and were considered as in force as late as 1792. Chapter 29 Primer Westminster, as to the penalty of a Sergeant or pleader committing deceit, and Chapter 7 of the Statutes, James I., 3, were printed in that year, as being in force in the State of North Carolina.*

This last statute was as follows:

"An Act to reform the Multitudes and Misdemeanors of Attornies and Solicitors at Law, and to avoid unnecessary Suits and Charges in Law.

"For that through the abuse of sundry Attornies and Solicitors by charging their clients with excessive fees, and other unnecessary demands, such as were not, nor ought by them to have been employed or demanded, whereby the subjects grow to be overmuch burthened, and the practice of the just and honest Serjeant and Counsellor at Law greatly slandered; And for that to work the private gain of such Attornies and Solicitors, the client is often times extraordinarily delayed: Be it enacted by the authority of this present Parliament, that no Attorney, Solicitor, or servant to any, shall be allowed from his client or master, of or for any fee given to any Serjeant or Counsellor at Law, or of or for any sum or sums of money given for copies to any Clerk or Clerks, or officers in any court or courts of record at Westminster, unless he have a ticket subscribed with the hand

* A Collection of the Statutes of the Parliament of England in force in the State of North-Carolina. Published according to a Resolve of the General Assembly. By Francois-Xavier Martin, Esq., Counsellor at law, 1792, pages 10, 356.

and name of the same Serjeant or Counsellor, Clerk or Clerks, or officers aforesaid, testifying how much he hath received for his fee, or given or paid for copies, and at what time, and how often: And that all Attornies and Solicitors shall give a true bill unto their masters or clients, or their assigns, of all other charges concerning the suits which they have for them, subscribed with his own hand and name, before such time as they or any of them shall charge their clients with any the same fees or charges: And that if the Attorney or Solicitor do or shall willingly delay his clients suits to work his own gain, or demand by his bill any other sums of money, or allowance upon his account of any money which he hath not laid out or disbursed, that in every such case, the party grieved, shall have his action against such Attorney or Solicitor, and recover therein costs and treble damages, and the said Attorney and Solicitor shall be discharged from thenceforth from being an Attorney or Solicitor any more.

"II. And to avoid the infinite numbers of Solicitors and Attornies, be it enacted by the authority of this present Parliament, that none shall from henceforth be admitted Attornies in any the King's courts of record aforesaid, but such as have been brought up in the same courts, or otherwise well practised in soliciting of causes, and have been found by their dealings to be skilful and of honest disposition: And that none to be suffered to solicit any cause or causes in any of the courts aforesaid, but only such as are known to be men of sufficient and honest disposition; And that no Attorney shall admit any other to follow any suit in his name, upon pain that both the Attorney and he tha followeth any such suit in his name, shall each of them for-

feit for such offence, twenty pound, the one moiety whereof to our Sovereign Lord the King, his heirs and successors, and the other moiety to the party grieved, to be recovered in any the said courts of record aforesaid, by original writ of debt, bill, plaint, or information, wherein no manner of essoin, wager of law, or protection shall be allowed: And that the Attorney in such case shall be excluded from being an Attorney for ever thereafter." *

In 1777, after North Carolina became a State, the admission of Attorneys was regulated by

"An act for establishing courts of law, and for regulating the proceedings therein," as follows:

VII. And be it further enacted by the authority aforesaid, That all persons who have heretofore obtained licences to practise as attornies in the courts under the late government, and have been admitted as such, shall hereafter be permitted to practise in such courts in which they were heretofore admitted to practise, without any further examination; and every person who shall hereafter apply for admission to practise as an attorney, shall undergo an examination before two or more judges of the superior courts of this state, and if such person shall be found to possess a competent share of law knowledge, and be a person of upright character, such judges shall give him a certificate, under their hands and seals, to practise in any court of this state for which they may judge him qualified.

VIII. And be it further enacted by the authority aforesaid, That no person coming into this state from any other state, or from any foreign country, with an intention to prac-

* Statutes of England in force in North Carolina, 1792, pages 356-7.

tise the law, shall by the said judges be admitted to practise as an attorney, unless he shall have previously resided one year in this state, or unless such person shall produce to the said judges a testimonial from the chief magistrate of such state or country, or from some other competent authority, that he is of an unexceptionable moral character; and all such attornies, before they shall be admitted to practise in any court, shall in open court, before the judges thereof, take the following oath, viz.:

> "I A. B. do swear, that I will truly and honestly demean myself in the practise of an attorney, according to the best of my knowledge and ability, So help me God."

And upon such qualification had, and oath taken, such attornies, as well as those who have heretofore obtained licences, may act as attornies during their good behaviour.*

In North Carolina an act was passed in 1786 as to the jurisdiction of courts, etc., the 2d clause of which was as follows:

> "II. AND whereas the frequent Abuſes of Attornies have occaſioned Diſtreſſes to many of the good People of this State; *Be it therefore enacted*, That it ſhall not be lawful for either Plaintiff or Defendant to employ in any Matter or Suit whatever more than one Attorney to ſpeak to any Suit in Court; and the Courts in this State are hereby directed not to ſuffer more than one Attorney as aforeſaid in any Matter whatever, to plead for either Plaintiff or Defendant to any Suit, under the Penalty of a Violation of this Act." †

* Public Acts of North Carolina. Edition of 1804, Vol. 1, page 210.

† "Laws of the State of North Carolina," 1715–1790, Ch. 14.

The 4th clause established fees to be taken by attorneys; and the 5th provided that if any attorney should take directly or indirectly any other or greater fees "it ſhall be deemed in ſuch Attorney a Miſdemeanor in his Office or Profeſſion of an Attorney;" and then provided for proſecution, trial by jury, and dismission from practice for one year in case of conviction.

The provision as to admission of attorneys now is as follows:

"Attorneys before they shall be admitted to practice law shall, in open court before a justice of the supreme or judge of the superior court, take the oath prescribed for attorneys, and also the oaths of allegiance to the state, and to support the constitution of the United States, prescribed for all public officers, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken, may act as attorneys during their good behavior." The oath prescribed is as follows:

> "I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God." *

North Carolina has a recent statute regulating the disbarment and suspension of Attorneys which specifies the causes for which they may be removed from office, but recognizes the discretionary power of the Court to disbar or suspend them.†

* Revised Laws of North Carolina, 1905, Chap. 5, Sect. 209; Chap. 56, Sect. 2360.
† Public Laws, North Carolina, 1907, Ch. 941.

IN PENNSYLVANIA.

The first provision of law as to Attorneys in Pennsylvania was in 1722 in

"An ACT for establishing Courts of Judicature in this province," as follows:

"XXVIII. And be it further enacted, That there may be a competent number of persons, of an honest disposition, and learned in the law, admitted by the Justices of the said respective courts, to practise as Attornies there; who shall behave themselves justly and faithfully in their practice: And if they misbehave themselves therein, they shall suffer such penalties and suspensions, as Attornies at law in Great-Britain are liable to in such cases; by which Attornies actions may be entered, and writs, process, declarations, and other pleadings and records, in all such actions and suits, as they shall respectively be concerned to prosecute or defend from time to time, may be drawn, and with their names and proper hands signed: Which said Attornies so admitted may practise in all the courts of this province, without any further or other licence or admittance: And that the Attorney for the plaintiff in every action shall file his warrant of attorney in the Prothonotary's office the same court he declares: And the Attorney for the defendant shall file his warrant of attorney the same court he appears: And if they neglect so to do, they shall have no fee allowed them in the bill of costs, nor be suffered to speak in the cause, until they file their warrants respectively." *

* Laws of Pennsylvania. Edition of 1797, Vol. I., page 185.
By the act of the 25th day of September, 1786, 2d vol., page 472, the court is

In 1726 an attorney's oath of office was prescribed by Governor as follows:

"AT a General Assembly begun at Philadelphia, the Fourteenth Day of October, in the Thirteenth Year of the Reign of our Sovereign, Lord George King of Great-Britain, &C. Anno; Domini, One Thousand Seven Hundred and Twenty Six and continued by Adjournment till the Twenty fifth Day of August One Thousand Seven Hundred and Twenty Seven, the following Acts were passed by the Honourable Patrick Gordon, Esq.; Governour of the said Province, That is to say.

An ACT for the Establishing of Courts of Judicature in this Province:

* * * * * * * * *

And be it further Enacted by the Authority aforesaid, That there may be a competent Number of Persons of an honest Disposition, and learned in the Law, admitted by the Justices of the said respective Courts, to Practice as Attorneys there, who shall behave themselves justly and faithfully in their Practice; and before they are so admitted, shall take the following Qualification, viz.

> Thou shalt behave thy self in the Office of Attorney within the Court, according to the best of thy Learning and Ability, and with all good Fidelity, as well to the Court as to the Client: Thou shalt use no Falshood, nor Delay any Persons Cause for Lucre or Malice.

And if they misbehave themselves therein, they shall suffer such Penalties and Suspensions as Attorneys at Law in

empowered to make rules for the government of its own practice; and by the act of the 13th day of April, 1791, 3d vol., page 96, the Judges of the Courts of Record therein mentioned are excluded from practising as Counsellors or Attornies.

Great-Britain are liable to in such Cases; by which Attorneys, Actions may be entered, and Writs, Process, Declarations and other Pleadings, and Records in all such Actions and Suits as they shall respectively be concerned to prosecute or defend, from Time to Time may be drawn and with their Names and proper Hands signed. Which said Attorneys so admitted, may practice in all the Courts of this Province, without any further or other Licence or Admittance.

And that the Attorney for the Plaintiff in every Action shall file his Warrant of Attorney in the Prothonotary's Office the same Court he declares, and the Attorney for the Defendant shall file his Warrant of Attorney the same Court he appears and if they neglect so to do, they shall have no Fee allowed them in the Bill of Costs, nor be suffered to speak in the Cause until they file their Warrants of Attorney respectively." *

The oath of office prescribed by this statute has been substantially retained in use to the present time with "thou" and "thy," the Quaker form, changed to "you" and "your," and is now as follows:

> "You do swear (or affirm) that you will support the Constitution of the United States, and the constitution of this commonwealth, and that you will behave yourself in the office of attorney within this court according to the best of your learning and ability, and with all good fidelity, as well to the court as to the client, that you will use no falsehood, nor delay any person's cause for lucre or malice." †

* Laws of Pennsylvania. Edition of 1728, pages 327, 336.
† Digest Laws (Pepper and Lewis), page 225.

IN RHODE ISLAND.

In Rhode Island an act was passed in 1647 as to Attorneys, which specifically referred to the English statutes as to lawyers. It was as follows:

> "Be it enacted by the authority of the present Assembly that any man may plead his own case in any court or before any jury of record throughout the whole Colony, or make his attorney to plead for him, or may use the attorney that belongs to the court, which may be two in a town, to wit: discreet, honest and able men for understanding, chosen by the townsmen of the same town, and *solemnly engaged by the head officer thereof, not to use any manner of deceit to beguile either court or party*. And these being thus chosen and confirmed, shall be authorised, being entertained, to plead in any court of the Colony; but in case any such pleader or attorney shall use any manner of deceit, as is aforesaid, and be thereof attainted, or that shall be notoriously in any default of record, he shall forfeit his place and never more be admitted to plead in any court of the Colony. 3 Ed. 4, 28; 4 Hen. 4, 18—."*

The words "solemnly engaged" in this act may not have required an oath, but at a General Assembly held at Newport the second of May, 1705, an act was passed specifically providing for an oath as follows:

> "no attorney shall be admitted to plead in any of the Courts but shall be Sworne, not to Plead for favour nor

* Code of Laws of R.I., 1647 (Staples), page 58.

affection for any Person, but ye meritt of the Case according to Law." *

The admission of attorneys to practise in the Courts of Rhode Island was regulated by the Courts until 1798, under the authority given by statute to make such necessary rules of practice as the Court should from time to time find necessary for the better regulation of the Court. In 1822, however, Section 4 of the act to establish a Supreme Judicial Court provided

> " . . . That the said Supreme Court shall have power . . . to make and establish all such rules for the admission of attornies to practice in said court, and for the orderly conducting business therein, as the discretion of said court shall direct; provided such rules are not repugnant to the laws of the state."

The present statute provides that

"The Supreme Court . . . shall by general or special rules regulate the admission of attorneys to practice in all the courts of the state."

It was, however, the custom from the beginning, as is shown by the records of the Court, to require an official oath upon the admission of an attorney. The records of the Supreme Court of 1765 show that

"Joseph Aplin, Esq., was admitted and duly sworn an attorney and practitioner of this court." †

* Public Laws of Rhode Island, 1636–1705, page 116 (reprint edited by Sidney S. Rider, 1896).

† Records in custody of Clerk of Supreme Court, Book 1, page 404, April 27, 1765.

In May, 1837, the Supreme Court established the following as the form of an attorney's oath:

> I _____ do solemnly swear, that I will demean myself as an Attorney and Counsellor of this Court, and all other Courts and tribunals of the State before whom I may practise as an Attorney or Counsellor, uprightly and according to law, and that I will support the Constitution and laws of this State, and the Constitution of the United States.*

In 1886 this form was slightly modified as follows, which is the form now used:

> I, _____, do solemnly swear that I will demean myself as an attorney and counsellor of this court, and of all other courts before which I may practice as an attorney and counsellor, uprightly and according to law, and that I will support the Constitution and laws of this State and the Constitution of the United States.†

* Rules of Supreme Court adopted May, 1837, I. R.I., IX.
† Rules of Supreme Court adopted March, 1886, 15 R.I., 632.

IN SOUTH CAROLINA.

A large number of English statutes were made of force in South Carolina in December, 1712. Among others Chapter 29 of Primer Westminster as to penalties upon serjeants or pleaders committing deceit; and also the provision of Chapter 18, 4 Henry 4 (A.D. 1402), as to the admission and regulation of attorneys, as follows:

> "The punishment of an Attorney found in Default.
>
> "ITEM, For sundry damages and mischiefs that have ensued before this time to divers persons of the realm by a great number of attornies, ignorant and not learned in the law, as they were wont to be before this time; (2) it is ordained and stablished, That all the attornies shall be examined by the justices, and by their discretions their names put in the roll, and they that be good and virtuous, and of good fame, shall be received and sworn well and truly to serve in their offices, and especially that they make no suit in a foreign county; and the other attornies shall be put out by the discretion of the said justices; (3) And that their masters, for whom they were attornies, be warned to take others in their places, so that in the mean time no damage or prejudice come to their said masters. (4) And if any of the said attornies do die, or do cease, the justices for the time being by their discretion shall make another in his place, which is a virtuous man and learned, and sworn in the same manner as afore is said; (5) and if any such attorney be hereafter notoriously found in any

default of record, or otherwise, he shall forswear the court, and never after be received to make any suit in any court of the King. (6) And that this ordinance be holden in the Exchequer after the discretion of the treasurer and of the barons there." *

In 1721 the admission of attorneys was provided for by

"An Act for establishing County and Precinct Courts," as follows:

"And whereas divers unskilful person do often undertake to manage and solicit business in the courts of law and equity, to the unspeakable damage of the clients, occasioned by the ignorance of such solicitors, who are no ways qualified for that purpose, tending to the promoting litigiousness, and encouraging of vexatious suits: Be it therefore enacted, That no person whatsoever shall practise or solicit the cause of any other person, in the said county or precinct courts, or any other court of law and equity in this Province, unless he hath been heretofore admitted and sworn as an attorney, or hereafter shall be admitted and sworn as an attorney, by the Chief Justice and Judges of the General and Supreme Court at Charlestown, under the penalty of £.100 for every cause he shall so solicit, one-half to his Majesty for the use of the public, and the other half to him or them that will sue for the same." †

* South Carolina Statutes at Large, Vol. 2, pages 401, 420, and 447. Public Laws of South Carolina (Ed. 1790), page 28.

† Public laws of South Carolina (Ed., 1790), page 116.

In 1785 an act "to regulate the admission of attornies at law" was passed as follows:

"WHEREAS, the admission of attornies at law, in this State, hath hitherto depended on a rule of court, which experience hath shewn to be productive of great uncertainty and confusion; for remedy whereof,

"I. *Be it enacted*, by the honorable the Senate and House of Representatives, now met and sitting in General Assembly, That when any person, citizen of the United States of America, who hath resided four years in any one or more of them, shall have acquired a sufficient knowledge of the laws of this State to qualify him to practise the law in this State, and shall apply for admission to the bar, he shall address a petition to the judges of the court of common pleas, praying to be examined touching his capacity, ability and fitness to plead and practise as an attorney; whereupon any three of the said judges, or two of them with one of the chancellors, or any one of them with two of the chancellors, shall, and they are hereby directed, diligently and faithfully to examine such person touching his capacity, ability and fitness to plead and practice as aforesaid, and to whom such person shall also produce satisfactory testimonials of his probity, honesty and good demeanor; and if such person shall be found duly qualified, the said judges on examination shall grant to such person a license, from under their hands, to plead and practise as an attorney, in any court of law or equity in this State.

"II. *And be it further enacted* by the authority aforesaid, That when any person shall have served a

clerkship of four years to some practising attorney of the said court of common pleas, who hath practised therein for the term of seven years thence before, or to the prothonotary of the said court, and shall adduce satisfactory proof thereof to the said court; or any native of the United States who shall produce proper testimonials of his having studied for three years in any foreign university or law college, and is willing and desirous of being examined as to his knowledge of law, which the judges of the court of chancery or common pleas are hereby authorised and required to do in manner aforesaid, and on such examination shall be found duly qualified — every such person and persons shall be admitted to the bar of the several courts of law and equity in this State.

"III. And whereas, by the articles of confederation, every citizen of the United States is entitled to the privilege of following his calling or profession in each of the said United States; *Be it therefore enacted* by the authority aforesaid, That where any citizen of any of the United States hath been admitted to plead and practise the law in any court of supreme jurisdiction in either of the said United States, and shall become a resident of this State, such person may prefer his petition to the court of common pleas of this State, setting forth such his admission, and shall moreover produce to the said court a certificate under the hands of the judges of such supreme court, or a majority of them, and the seal of their court, that such person is an attorney of such court, duly admitted, at least two years previous to the date of such certificate, and is a person of unblemished character for probity, honesty and good

demeanor, whereupon such person shall be admitted to the bar of the supreme courts of law and equity in this State.

"IV. *And be it further enacted* by the authority aforesaid, That every person so licensed and admitted as aforesaid shall, at the time of his admission, take the oath of allegiance and fidelity to this State, and likewise the oath of an attorney; and if any person shall presume to act without having taken the said oaths respectively, such person shall forfeit and pay the sum of one hundred pounds sterling, to be recovered by any informer who shall sue for the same by action of debt, in any court of record having jurisdiction: Provided, that nothing contained in this Act shall exclude any person or persons who have any business depending in any of the courts, either to plead in his own case, to put in his plea or answer at the proper office, or file his declaration, as the case may be." *

The present law of South Carolina forbids any person to practise in any Court unless he has been admitted and sworn as an attorney, under a penalty of $500 for each cause in which he shall act. A license to practise as an attorney can only be granted by the Supreme Court upon a written examination upon a course of study prescribed by it, or upon a degree of the Law School of the State University, and satisfactory evidence of good moral character. Upon admission the attorney must take and subscribe the oath required by the Constitution of all officers, and the oath respecting duelling, in open Court, and his name is then entered on the roll of attorneys in Court.

* Statutes at Large, South Carolina, Vol. IV., page 668.

IN VIRGINIA.

The admission of attorneys was regulated in Virginia in 1642 by an act which provided that

"For the better regulating of attorneys and the great fees exacted by them, it shall not be lawfull for any attorney to plead causes on behalfe of another without license or permission first had and obtained from the court where he pleadeth, Neither shall it be lawfull for any attorney to have license from more courts then from the quarter court and one county court, and that they likewise be sworne in the said courts where they are so licensed, And it is further enacted that no attorneys plead in any county court shall demand or receive either for drawing petition, declaration or answer and for his ffee of pleading the cause of his client above the quantitie of 20 lb. of tobaccoe or the value thereof, nor that at any pleading in the quarter court shall demand and receive either for drawing petition, declaration or answer and for his ffee of pleading the cause of his cliant above the quantity of 50 lb, of tobaccoe or the value thereof, And if any attorney shall transgresse against the premises, or shall take above the severall sums aforesaid either by gift or love directly or indirectly, such attorney for such offence in a countye court shall forfeit 500 lb. tobaccoe, And for such offence in quarter court shall forfeit 2000 lb. of tobaccoe, one moyety whereof shall be and come to the King, and the other moyetie or halfe to the informer, whether it be client or adverse party, or any other person whatsoever, and may recover the same by action of debt in the severall courts respectively, And it is further thought fitt that no

attorney licensed as aforesaid shall refuse to be entertayned in any cause as aforesaid, provided he be not entertayned by the adverse party, vppon forfeiture of 250 lb. of tobacco in a countie court, and 1000 lb. of tobaccoe in the quarter court one moyety whereof shall come to the King's majesty and the other halfe to the informer aforesaid, Provided this act nor any penaltie therein expressed extend to such who shall be made speciall attorneys within the collony or to such who shall have letters of procuration out of England." *

In 1645 an act was passed as follows:

"WHEREAS many troublesom suits are multiplied by the vnskillfullness and coveteousness of attorneys, who have more intended their own profit and their inordinate lucre then the good and benefit of their clients: *Be it therefore enacted*, That all mercenary attorneys be wholly expelled from such office, except such suits as they have already vndertaken, and are now depending, and in case any person or persons shall offend contrary to this act to be fined at the discretion of the court." †

In the same year an act was passed repealing the Act of 1643 for the licensing of Attorneys.‡

In 1647 the following peculiar act was passed:

"*IT is thought fitt* that vnto the act forbidding mercenary attorneys, It bee added that they shall not take any recompence either directly or indirectly. And that it be further enacted, That in case the courts shall perceive that in any

* Laws of Virginia, March, 1642-3, Act LXI.
† Laws of Virginia, November, 1645, Act VII.
‡ Laws of Virginia, March, 1645-6, Act VIII.

case either plt. or defendant by his weakeness shall be like to loose his cause, that they themselves may either open the cause in such case of weakness or shall appoint some fitt man out of the people to plead the cause, and allow him satisfaction requisite, and not to allow any other attorneys in private causes betwixt man and man in the country." *

The fact that no "mercenary" attorneys, that is, attorneys acting for compensation could practise in the Courts, apparently produced difficulty, and in 1656 all acts against such attorneys were repealed and provision was made for the admission of attorneys by the following act:

"THIS Assembly findeing many inconveniencies in the act prohibiting mercenary attornies, *doe therefore hereby enact*, and be it by these presents enacted, that that act, and all other acts against mercenary attorneys to bee totally repealed, And be it enacted that the Governour and Councill shall appoint and allow such as they shall find fitt and able to be attornies in the quarter courts, and the comissioners to do the like by nominateing attornies for the county courts, Provided that no attorney be admitted to practice or plead, before he hath taken this oath following:

(The oath is wanting in both MSS.)

And if any controversies arise between attornie and his client about their ffee, it shall be determined in the court where the cause is pleaded, Provided allwaies that those onely be called councellors at law, who have allreadie been qualified therevnto by the lawes of England, and those so qualified to enjoy all priviledges those lawes give them." †

* Laws of Virginia, November, 1647, Act XVI.
† Laws of Virginia, December, 1656, Act VI.

At this time the acts of the Assembly were not printed and this statute was afterwards printed from manuscripts of Mr. Jefferson and of Mr. Rand, in both of which the oath was found wanting, and that fact is noted in the printed statute.

In March, 1657, the following act was passed, which of course repealed the act of 1656, and provided a new oath, which may, perhaps, account for the oath in the act of 1656 not being written out:

"WHEREAS there doth much charge and trouble arise by the admittance of attorneys and lawyers through pleading of causes thereby to maintain suites in lawe, to the greate prejudice and charge of the inhabitants of this collony for prevention thereof *be it enacted by the authoritie of this present Grand Assembly* that noe person or persons whatsoever within this collony either lawyers or any other shall pleade in any courte of judicature within this colloney or give councill in any cause or controversie whatsoever, for any kind of reward or profitt whatsoever, either directly or indirectly vpon the penalty of ffive thousand pounds of tobacco vpon every breach thereof: And because the breakers thereof through their subtillity cannot easily bee discerned: *Bee it therefore further enacted*, That every one pleading as an attorney to any other person or persons, If either plt. or defend't desire it shall make oath, That he neither directly or indirectly is a breaker of the act aforesaid." *

In March, 1658, the House of Burgesses considered the

* Laws of Virginia, March, 1657-8. Act CXII.

question whether there should be "a regulation or totall ejection of lawyers," and resolved that there should be "an ejection," which action was communicated to the Governor and Council, who answered it, saying:

> "The Governour and Council will consent to this proposition so farr as it shall be agreeable to Magna Charta."

Apparently the law remained in this unsatisfactory condition until 1680, when an act was passed providing for the licensing of lawyers who practised for compensation fixed by the act, as follows:

"WHEREAS all courts in this country are many tymes hindred and troubled in their judiciall proceedings by the impertinent discourses of many busy and ignorant men who will pretend to assist their freind in his busines and to cleare the matter more plainly to the court, although never desired or requested thereunto by the person whome they pretended to assist, and many tymes to the destruction of his cause, and the greate trouble and hindrance of the court; for prevention whereof to the future, *Bee it enacted by the kings most excellent majestie by and with the consent of the generall assembly, and it is hereby enacted by the authority aforesaid* that noe person or persons whatsoever shall practice as an attorney or appeare to plead in the generall court or any county court in this country but such as shalbe first lycensed by his excellency or successors thereunto, and that any one that shall presume to plead in the generall court or any county or other court without such lycense ffirst obtained and had, shall forfeite for every such offence comitted in the

generall court two thousand pounds of tobacco, and for every such offence comitted in the county court six hundred pounds of tobacco, the one halfe to our sovereigne lord the king, his heires and successors, and the other halfe to the informer to be recovered by action of debt, bill plaint or information in the said court or courts where such offence shalbe comitted. *And be it further enacted by the authority aforesaid* that noe attorney or attorneys soe lycensed as aforesaid, take, demand, or receive from any person or persons, more for any cause in the generall court and bringing the same to judgment, then five hundred pounds of tobacco and caske, and for any cause in the county courts and bringing the same to judgment more then one hundred and ffifty pounds of tobacco and caske. *And it is hereby declared and enacted* that every attorney or attorneys shall have for every cause he undertakes in the generall court, five hundred pounds of tobacco and caske, and for every cause he undertakes in the county court, one hundred and fifty pounds of tobacco and caske, which he may lawfully clayme without any preagreement made with the partyes for the same. *And be it further enacted by the authority aforesaid, and it is hereby enacted* that all such attorney and attorneys that shall refuse to plead any cause in the generall court for the aforesaid ascertained fee of ffive hundred pounds of tobacco and caske, shall forfeite and pay to the person greived ffive hundred pounds of tobacco and caske, after legall conviction, on due proofe thereof made, to be recovered by due processe of law; and upon refusall of any cause in the county court shall pay to the party greived one hundred and ffifty pounds of tobacco and caske, after legall conviction as aforesaid, to be recovered by due processe of law.

Provided alwayes that this act nor any clause therein shall not extend to debarr any man that is capable of pleading and managcing his owne cause and busines in any of the said generall or county courts, but that he may be permitted and allowed to plead and manage his owne businesse, any thing in this act to the contrary notwithstanding." *

In 1682 the act of 1680 was repealed, but no provision was made for attorneys appearing in the Courts without compensation. The law remained in this condition until the statutes were revised in April, 1718, when attorneys were allowed fees to be taxed in the bill of costs.

In 1732 an act was passed requiring lawyers to be licensed to practise and to take an oath, as follows:

> " You shall do no falsehood, nor consent to any to be done in the court; and if you know of any to be done you shall give notice thereof to the justices of the court that it may be reformed: You shall delay no man for lucre or malice or take any unreasonable fees: You shall not wittingly or willingly sue or procure to be sued any false suit, nor give any aid nor consent to the same, upon pain of being disabled to practice as an attorney for ever. And furthermore, you shall use yourself in the office of an attorney within the court, according to your learning and discretion. So help you God." †

This oath, it will be noticed, is a copy of the oath prescribed by the New Hampshire and Massachusetts statutes of 1680 and 1701. This act also provided that the attorney's

* Laws of Virginia, June, 1680, Act VI.
†4 Henning, 361.

oath was to be taken instead of the oath of allegiance and supremacy, but the attorneys in the County Courts were also required to take and subscribe the English oath of abjuration and to subscribe the test.

Between 1718 and 1732 there were various acts regulating the office of attorneys and imposing penalties upon them for failing to appear when engaged to do so. Later the act requiring a license to appear was repealed, but soon after reënacted. In 1742 an act was passed prescribing an oath against exacting or receiving exorbitant fees.

Finally, in 1748, an act was passed providing for licensing lawyers, and prescribing the following oath:

> "I, A. B., do swear that I will truly and honestly demean myself in the practice of an attorney according to the best of my knowledge and ability. — *So help me God.*" *

From this time until the Revolution, numerous acts were passed regulating the conduct and rights of lawyers in many ways, but no new oath was required.

In May, 1776, an act was passed requiring every attorney upon admission to practice to take the following oath:

> "I, A. B., do solemnly promise and swear, that I will be faithful and true to the commonwealth of Virginia, and that I will well and truly demean myself in the office of an attorney-at-law. So help me God." †

The present provision in Virginia as to admission of attorneys provides that three or more Judges of the Supreme Court of Appeals, voting together, may, under such rules

* 6 Henning, 140.
† 9 Henning, 121.

and regulations, and upon such examination, both as to learning and character, as may be prescribed by the said Court, grant a license in writing to practise law in the Courts, and requires the Court of Appeals to make and promulgate such rules and regulations. The statute also requires the attorney to produce before each Court in which he intends to appear evidence of his being so licensed, and to "take an oath that he will honestly demean himself in the practice of the law, and to the best of his ability execute his office of attorney-at-law; and also, when he is licensed in this state, take the oath of fidelity to the commonwealth." *

* Virginia Code, 1904, Chapter 154. See also 4 Virginia Law Register, 326; 13 Virginia Law Journal, 327; Virginia Code, 1849, page 635.

IN VERMONT.

The first law in regard to attorneys in Vermont was passed March 3, 1787, entitled "An act for the appointment and regulating of Attornies, and pleadings at the bar," as follows:

"BE *it enacted by the General Assembly of the State of Vermont*, That the Supreme and County Courts in this State shall appoint, and they are hereby empowered to nominate and appoint, Attornies, as there shall be occasion, to plead at the bar; which Attornies shall, before the Court appointing them, take the following oath, *viz.*:

"'You swear by the ever-living God, that you will do no falsehood, nor consent to any to be done, in the Court; and if you know of any to be done in the Court, you shall give knowledge thereof to the Justices or Judges of said Court, that the same may be reformed. You shall not wittingly and willingly, or knowingly, promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same You shall demean yourself in the office of an Attorney within the Court, according to your best learning and discretion, and with all good fidelity, as well to the Court, as to the client. So help you God.'

"The administering and taking of which oath, together with the appointment of any Attorney, shall be registered by the Clerk of the Court wherein he shall be admitted, and shall be a sufficient evidence of his admission as an Attorney at the bar, in any Court in this State.

"*Provided always*, That the Supreme Court of Judica-

ture in this State, shall hereafter have the exclusive right of appointing and admitting Attornies to plead at their bar; and no Attorney, who shall be admitted to plead in the County Courts, as aforesaid, (except the several State Attornies) shall thereby be authorized or empowered to plead in the Supreme Court, without permission or licence first obtained from the Supreme Court.

"*And be it further enacted by the authority aforesaid*, That in each county in this State, there shall be one State's Attorney, who shall prosecute, manage, and plead, in the county wherein he is appointed, in all matters proper for, and in behalf of, this State; which Attorney shall be appointed by the respective County Courts, and shall have a right to plead, in behalf of the State, as well in the Supreme as County Court, in the county where he is appointed: and the several Attornies, who shall be allowed and appointed as aforesaid, shall, from time to time, be under the direction of the Courts before whom they plead; and the several Courts shall have power to suspend or displace any of their Attornies, for misdemeanors, or fine them not exceeding ten pounds, for each offence.

"*And that persons allowed as Attornies may be duly qualified to practice.*

"*Be it further enacted by the authority aforesaid*, That no person shall hereafter be licenced, by either of the Courts above mentioned, to practice the law in this State, without such person applying shall have previously studied at least three years with a licenced Attorney of this State, and, upon examination by the said Court, shall be found to have a competent knowl-

edge of the laws; or unless the person applying for licence shall have obtained a degree of Bachelor of Arts, in some University or College, and have studied at least two years with a licenced Attorney of this State, and upon examination by the said Court, shall be found to have a competent knowledge of the laws for that purpose." *

The form of Attorney's oath prescribed by the Act of 1787 is now prescribed by law. †

* Statutes of Vermont, February and March, 1787, page 22.
Public Statutes of Vermont (1906), page 1234.

IN OTHER STATES.

With the exception of the States of South Dakota, Oklahoma and Maine, which have adopted substantially the oath of office prescribed in New Hampshire, Connecticut and Vermont, all the States since admitted to the Union except two have either adopted substantially the form of oath prescribed in New York, or that prescribed by the rule of the Supreme Court of the United States. But in Colorado the candidate for admission is also required to swear that he has never been disbarred or convicted of felony, and in Kentucky and Nevada to swear that he has not fought a duel nor sent or accepted a challenge, nor acted as second, nor aided any person thus offending.* And in Minnesota he is also required to swear that he will behave himself in an upright and courteous manner to the best of his learning and ability. †

The two exceptions are the State of Idaho, where the oath prescribed is as follows:

> "1. To support the constitution and laws of the United States and of this state;
>
> 2. To maintain the respect due to the courts of justice and judicial officers;
>
> 3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;
>
> 4. To employ, for the purpose of maintaining the causes confided to him, such means only as are con-

* Constitution of Kentucky, Section 228; Constitution of Nevada.
† Laws of Minnesota.

sistent with truth, and never seek to mislead the judges by an artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his clients;

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

7. Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest;

8. Never to reject for any consideration personal to himself the cause of the defenseless or the oppressed;" *

and the State of Washington, where the oath prescribed is this:

"1st. I do solemnly swear that I will support the Constitution and laws of the State of Washington.

2d. That I will maintain the respect due to Courts of Justice and Judicial Officers.

3d. That I will counsel and maintain such actions, proceedings and defenses only, as appear to me legal and just; except the defense of a person charged with a public offense.

4th. To employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and never to seek to mislead the judge by any artifice or false statements of facts or law.

* Idaho Code, 1901, Section 3094.

5th. That I will maintain inviolate the confidence and, at every peril to myself, preserve the secrets of my client.

6th. That I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

7th. That I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed. So help me God." *

The laws of Oklahoma and South Dakota also prescribe as duties of the attorney the obligations of the oath prescribed by the oath in Idaho quoted above.†

This extended and necessarily repetitious compilation of the colonial, provincial and early State statutes of the original States of the Union and summary of the oaths of office in the other states shows how the lawyer's office has been established and what it now is in the United States better than any mere statement, however carefully made, could show. It also shows how the lawyer's oath has been impaired in most of the States and in the Federal Courts, so that it has ceased to be a distinctive oath of office.

This ought to be reformed. The oath ought to set forth something of the duties and obligations of the lawyer's office. I believe this can be best done by restoring where it has been abandoned, and by putting in force where it has never existed, substantially the form of the oath of office

* Laws of Washington.

† Statutes of Oklahoma, 1903, Section 226; Statutes of South Dakota, Section 734.

which was used in the New England States in the colonial times. This form breathes the true spirit of the common law. It embodies those duties which were really embodied in and understood to be imposed by the oath of a sergeant or a pleader under the ancient English law. This oath smells of the common law as a lawyer's oath of office under the common law should. No oath framed upon the obligations of the office as understood under the civil law is appropriate to the obligations imposed by the office under the common law.

Admission to the Bar should, I think, also be by the highest Court in the State and in open court. The oath of office should be administered by the Chief Justice, or some Justice of that Court, and he should then explain to the candidates the significance of the oath, and charge them as to the professional duties which it imposes, according to the ancient method in which sergeants-at-law were instructed upon receiving that degree.

The administration of the oath and the admission to the office of an attorney should be made as impressive and as instructive as possible, to the end that those who are admitted to the lawyer's office may understand its powers, responsibilities and duties, and may be thereby made to know and to feel the importance and the dignity of the office which they take upon themselves. In most States nothing of this kind is done and in none of the States, so far as I am aware, is there any instruction by the Court or any person appointed by the Court, at the time the oath of office is administered, as to what it means, and what the duties of the office are.

In the Federal Courts this is not so necessary, because no

persons are admitted in the Supreme Court who have not been for three years before admitted to practise as attorneys or counsellors in the Supreme Courts of the States to which they respectively belong.*

In the other Federal Courts it is very rare, I think, that any person is admitted to practice who has not been previously admitted in a State Court.

The following as to the lawyer's oath in England, France and Germany shows what the oath in those countries now is.

* Rules Supreme Court, U.S. R., 210, 472.

The Lawyer's Oath in England.

The order of serjeants-at-law has ceased to exist, and with it has gone the ancient oath of office of a sergeant-at-law. Attorneys and solicitors now take an oath prescribed by statute as follows:

> "I _____, do swear (or solemnly affirm, as the case may be) that I will truly and honestly demean myself in the practice of an attorney (or solicitor, as the case may be) according to the best of my knowledge and ability, so help me God." *

Barristers are not required to take any oath or to sign any roll, but assume practice as soon as they are admitted by one of the Inns of Court.†

The Lawyer's Oath in France.

In 1803 the law of the French Republic concerning the organization of the law profession provided that the "candidate is expected to offer before the Court to which he is admitted, the oath (of fidelity) exacted of all the officials of the state, and in addition to swear that he will perform his duties with exactness and probity."‡

In 1804, by the law concerning law schools, it was provided that

> "Attornies and barristers (Les avocats et avoués) are expected at the publication of this present law and,

* 6 and 7 Vict. Chapter 73, Sections 15, 16, 17, 18, 19.

† Marchant, Barristers-at-law, pages 12, 31, and 32 Vict. Chapter 72 (1868).

‡ Bulletin des Lois de la république française. 3ᵉ série, vol. 7. No. 258, Law, No. 2440, pages 593–603, Section 47. Lois of March 16, 1803 = 25 Ventôse, year XI.

in the future, before entering upon their functions, to offer oath neither to utter nor to publish, as defending lawyers or counsellors, anything contrary to the laws, to the regulations, to good manners (morals), to the stability of the state and the public peace; and never to disregard the respect due to the courts and the public authorities." *

In 1810, in the law concerning lawyers and advocates, it was provided that

> "The reception (of the candidate) shall take place at a public meeting, upon presentation of an old lawyer (ancien avocat) and the consent of the Attorney General. The candidate shall then offer an oath as follows:
>
> "'I swear obedience to the constitutions of the Empire and fidelity to the Emperor; neither to utter or publish anything contrary to the laws, to the regulations, to good manners (morals), to the stability of the state and the public peace; and never to disregard the respect due to the courts and the public authorities; not at any time to take or defend a case which, in my heart and conscience, I do not believe to be right.'" †

This oath remains practically unchanged, except that upon the Restoration and during the Second Empire changes were made in the political part of the oath, and that the Third

* Ibidem, Volume 9, No. 356, pages 701–709. Laws of year XII. (22 Ventôse = March 13, 1804), pages 706, 707.

† Bulletin des Lois de l' empire française. 4e série. Vol. 13 (Laws of 1810). No. 332 Laws of December 14, 1810 (pages 569–579). Sect. 14, page 572.

Republic has omitted the political oath and the professional oath alone is now required. *

The Lawyer's Oath in Germany.

The provision as to the lawyer's oath in Germany is that "Immediately upon admission, the lawyer offers at a public session of the Court, to which he is admitted, the following oath:

> "I swear by God almighty and all-knowing, to perform the duties of a lawyer conscientiously. So help me God." †

* Bulletin des Lois du Royaume de France. 7e série. Vol. 15 (Laws of 1822), no. 566, pages 513–520; especially § 38 (pages 518, 519). Bulletin des Lois de la République française. 10e série. Vol. 9 (Laws of 1852), pages 929–930; especially § 3 (page 930). Bulletin des Lois de l'Empire française. 11e série. Vol. 35 (Law of March 10, 1870), pages 357, 358.

† Reichs-Gesetzblatt, 1878. No. 23. Law, No. 1258, entitled Rechtsanwaltordnung.

BIBLIOGRAPHY.

The following is a partial list of authorities consulted in the preparation of this book:

PAGE

Abbreviatio Placitorum in Domo Capitulari Westm. asservat., 295 b . 39

Acts of Assembly, passed in the Province of Maryland, from 1692 to 1715. Edition of 1723, page 83 52

Acts and Laws of His Majesty's English Colony of Connecticut in New-England in America. Edition of 1750, page 180 42

Acts and Laws of His Majesty's Province of New-Hampshire. In New England. Edition of 1771. Chap. XXXVII., page 50 . . 71

An Act for the security of her Majesty's person and government, and of the succession to the crown of Great Britain in the protestant line, 44

Attorneys and their Admission to the Bar in Massachusetts. H. R. Bailey, page 13 60

Bell, C. The Supreme Court of the States and Provinces of North America. New York. 1893. Vol. I., Series 2, page 66 . . . 76

Body of Liberties, of Mass., Whitmore Reprint, page 39 56

Book of Oaths, The, and the severall forms, both antient and modern. Editions of 1649 and 1689 29

Branch *et al.*, 70 N.J. Law 77

Bulletin des Lois de la république française, 3ᵉ série, Vol. 7, No. 258, Law, No. 2440, pages 593–603, Sect. 47. Lois of March 16, 1803 = 25 Ventôse, year XI. 119

Ibidem, Vol. 9, No. 356, pages 701–709. Laws of year XII. (22 Ventôse = March 13, 1804), pages 706, 707 120

Bulletin des Lois du Royaume de France, 7ᵉ série, Vol. 13 (Laws of 1822), No. 566, pages 513–520, especially Sect. 38 (pages 518, 519). Bulletin des Lois de la république française, 10ᵉ série, Vol. 9 (Laws of 1852), pages 929, 930, especially Sect. 3 (page 930). Bulletin des Lois de l'Empire française, 11ᵉ série, Vol. 35 (Law of March 10, 1870), pages 357, 358 121

INDEX.